Jura Anglorum.

THE

RIGHTS OF ENGLISHMEN.

BY

FRANCIS PLOWDEN, ESQ.

CONVEYANCER,

OF THE

MIDDLE TEMPLE.

Felices nimium, sua si bona nôrint
Anglicolæ!

Too happy Britons, if their Rights they knew!

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PH
MVSEVM
BRITANNICVM

TO THE

RIGHT HONOURABLE

LORD KENYON,

LORD CHIEF JUSTICE OF HIS MAJESTY'S COURT OF KING'S BENCH, &c. &c.

AT a time when abilities and talents are moſt ſhamefully proſtituted to the execrable purpoſes of decrying ſubordination to civil power, and enervating the arm of lawful government, my grateful boaſt is the permiſſion to dedicate to your Lordſhip theſe humble efforts to explain the nature and reaſons of our conſtitution and government to the ignorant, and to enforce their energy and obligations againſt the malevolent. Your exemplary leſſons upon the perfections of our conſtitution and government have taught the nation to admire your

ability, and exult in your diſpoſition to preſerve them in full purity and vigor. And I feel the ſatisfactory conviction of bearing a truly patriotic attachment to our conſtitution, whilſt I am permitted to have the honor of ſubſcribing myſelf, with reſpect and eſteem,

MY LORD,

YOUR LORDSHIP'S

DEVOTED HUMBLE SERVANT,

FRANCIS PLOWDEN.

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ERRATA.

Page 170, line 19, for *evinced*, read *convinced*.
282, 24, for *common*, read *canon*.
420, 5, read principle *of* free election.
495, 10, for *than*, read *that*.
551, 7, for *Martin*, read *Matin*.
579, 3, for *unlawful*, read *lawful*.

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INTRODUCTORY

CONSIDERATIONS.

WHEN I profeſs to have undertaken the arduous taſk of diſcuſſing the *Rights of Engliſhmen*, I ſhudder at every view, which preſents itſelf, in the vaſt variety of difficulties, that threaten me in the execution of the deſign. The magnitude and importance of the ſubject call aloud for the exertions of every man, who makes his country's cauſe his own. No ſubject ſo deeply affects us as citizens; no ſubject, in ſo ſhort a period, ever produced ſuch a variety of diſcuſſions, diſſertations, and arguments; and I fear, that I am but too fully warranted in aſſerting, that no ſubject has ever been more miſconceived, more miſrepreſented, more miſapplied.

The importance of the ſubject.

When we ſee men of the moſt enlightened minds differ ſo widely upon principles apparently clear and uncontrovertible; when we read works of great erudition and ſtrength of argument written upon theſe principles, to inculcate doctrines the moſt repugnant and

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contradictory; when, in the various revolutions of empires, we ſee the moſt oppoſite effects produced by theſe very principles, what other concluſion can be drawn, than that the principles themſelves have been miſconceived, miſrepreſented, and miſapplied?

Miſconception, miſrepreſentation, and miſaplication of the principles.

It would derogate from the dignity of the ſubject under our conſideration, were I to deſcend into perſonal altercation or controverſy with the different perſons, who have already, by their publications, taken a deciſive part in the agitation of the queſtion: a queſtion the moſt elevated, dignified, and important, that can employ the mind of man, as it moſt eſſentially affects his happineſs, welfare, and exiſtence, in this ſtate of mortality. An eloquent writer has afforded me a moſt conſolatory apology for offering to the public my humble efforts, after the exertion of ſo many others of ſuperior talents, information, and experience *. "Too many "minds cannot be employed on a contro- "verſy ſo immenſe, as to preſent the moſt "various aſpects to different underſtandings, "and ſo important, that the more correct "ſtatement of one fact, or the more ſucceſs- "ful illuſtration of one argument, will at

Apology for this publication.

* Mr. Macintoſh's Advertiſement to his Vindiciæ Gallicæ;

"leaſt

" leaſt reſcue a book from the imputation of " having been written in vain."

In the combination of the political circumſtances of the preſent day, I know not how I can render a more eſſential ſervice to my country, than by endeavouring faithfully to repreſent, and ſtrongly to impreſs the minds of my countrymen with the true genuine principles of the *Rights of Man*; for upon this baſis hath been raiſed the moſt brilliant and ſtupendous work of human œconomy, the bleſſed and glorious *conſtitution* of the Britiſh empire. The great Chancellor Forteſcue entertained ſo ſublime an idea of it, as early as in the fourteenth century, that he ſaid*: " And for the ſame " reaſon it is, that † St. Thomas is ſuppoſed " to wiſh, that all the kingdoms and nations " in the world were governed, in the politi- " cal way, as we are." And the ſame learned Chancellor, in the inſtructions, which he gave to his royal pupil Prince Edward, the eldeſt ſon of King Henry the Sixth, carries his encomium of our laws and conſtitution to the very higheſt poſſible hyperbole ‡: " Rejoice, therefore, my good Prince, that

Chancellor Forteſcue's exalted ideas of our laws.

* De Laud. Leg. Ang. c. xxxvii. p. 86.

† This idea of St. Thomas Aquinas is taken from his book *De Regimine Principum.*

‡ De Laud. Leg. Ang. c. ix. p. 18.

" ſuch is the law of the kingdom, which you " are to inherit, becauſe it will afford both " to yourſelf and ſubjects the greateſt ſecu- " rity and ſatisfaction. With ſuch a law, " ſays the ſame St. Thomas, all mankind " would have been governed, if in paradiſe " they had not tranſgreſſed the law of God." The preference and ſuperiority, which our conſtitution claims over every other known political form of government, will confine my conſiderations ſolely to mine own country. The introduction of foreign matter, beſides diverting our minds from the proper attention to ourſelves, would argue an inadequacy in our eſtabliſhment to elucidate and enforce the fundamental principles of our conſtitution, which are, in fact no other, than thoſe of the *Rights of Man.*

Reaſons for avoiding any foreign matter.

Enlightened as the preſent age is, or pretends to be, it muſt appear highly paradoxical, that there ſhould exiſt a queſtion of difference upon principles apparently ſo clear and perſpicuous, that, like other firſt principles in philoſophy, they are to be taken upon credit, and ſubmitted to without heſitation; for *perſpicua non ſunt probanda.* * " What our " predeceſſors took great pains to prove, we

* Third Letter to Mr. Burke, p. 23.

" now

" now receive as *axioms*, and without heſita-
" tion act upon them," ſays Dr. Prieſtley, after having laid down, what he ſuppoſes to be the fundamental or firſt principles of goverment, according to Somers, Locke, and Hoadley. However, this ſort of unqueſtioning deference in the blind adoption of principles is pointedly reprobated by Mr. Locke *. " Such as are careful (as they call
" it) to principle children well (and few there
" be, who have not a ſet of thoſe principles
" for them, which they believe in) inſtil into
" the unwary, and as yet unprejudiced un-
" derſtanding (for white paper receives any
" characters) thoſe doctrines, they would have
" them retain and poſſeſs. Theſe being
" taught them, as ſoon as they have any ap-
" prehenſion, and ſtill, as they grow up, con-
" firmed to them, either by the open profeſ-
" ſion or tacit conſent of all they have to do
" with, or at leaſt by thoſe, of whoſe wiſdom,
" knowledge, and piety, they have an opi-
" nion, who never ſuffer theſe propoſitions
" to be otherwiſe mentioned, but as the baſis
" and foundation, on which they build their
" religion or manners, come by theſe means

Dr. Prieſtley recommends the adoption of principles without heſitation.

Mr. Locke reprobates it.

† Locke upon the Human Underſtanding, l. 1. p. 21. in the folio edition.

" to have the reputation of unqueſtionable,
" ſelf-evident, and innate truths.

" This is evidently the caſe of all chil-
" dren and young folk; and cuſtom, a greater
" power than nature, ſeldom failing to make
" them worſhip for divine, what ſhe hath
" inured them to bow their minds and ſub-
" mit their underſtandings to, it is no won-
" der that grown men, either perplexed in
" the neceſſary affairs of life, or hot in the
" purſuit of pleaſures, ſhould not ſeriouſly ſit
" down to examine their own tenets, eſpe-
" cially as one of their principles is, that
" principles ought not to be queſtioned.
" And had men leiſure, parts, and will, who
" is there almoſt, that dare ſhake the foun-
" dation of all his paſt thoughts and actions,
" and endure to bring upon himſelf the
" ſhame of having been a long time wholly
" in miſtake and error? Who is there hardy
" enough to contend with the reproach, which
" is every where prepared for thoſe, who dare
" to venture to diſſent from the received opi-
" nions of their country or party?"

Thus doth this great philoſopher not only recommend, but inſiſt upon, the neceſſity of every one's freely examining the principles of his own political and civil conduct. And when

when I enter upon the awful taſk, I ſhield myſelf under the duty of patriotiſm, againſt the diſheartening efforts of oppoſition, and the galling taunts of arrogance and preſumption. I am fully aware of the hackneyed affectation, with which many modern writers aſſume the excluſive privilege of illuminating mankind; as if our predeceſſors had worked through their lives, like moles in the dark, and had never riſen into the light, but by the chance of their own blind direction, or to injure the ground, through which they had emerged from their dark receſſes. Impreſſed, I preſume, with this idea, did the late Dr. Price thus addreſs himſelf to his audience, in a diſcourſe, which has been ſince printed*:

Modern writers affect to illuminate mankind.

" Why are the nations of the world ſo
" patient under deſpotiſm? Why do they
" crouch to tyrants, or ſubmit to be treated,
" as if they were a herd of cattle? Is it not
" becauſe they are kept in darkneſs, and
" want knowledge?—Enlighten them, and
" you will elevate them; ſhew them they
" are men, and they will act like men; give
" them juſt ideas of civil government, and
" let them know, that it is an expedient for

* Dr. Price's Diſcourſe on the Love of our Country, p. 12.

" gaining protection againſt injury, and de-
" fending their rights, and it will be impoſſi-
" ble for them to ſubmit to governments,
" which, like moſt of thoſe now in the world,
" are uſurpations on the rights of men, and
" little better than contrivances for enabling
" the *few* to oppreſs the *many*."

The true principle of equalization is to allow to others what we claim ourſelves.

The firſt principle of the true equalization of mankind is to aſſume no right to ourſelves, which we deny to others. As, therefore, I am unwilling to ſubmit my own aſſent to any principles, or doctrines grounded upon them, without previous inveſtigation and diſcuſſion; ſo do I preſume and admit the ſame right in others, in the moſt unexceptionable latitude. To them I allow the moſt unbiaſſed freedom of judgment, becauſe the ſame I claim to myſelf. And as I experience no ſmall degree of indignation, when the difference of my opinion from that of others is attributed to ignorance; ſo do I feel an equal degree of indelicacy, in aſcribing the diſagreement of that of others from my own to ignorance of the queſtion in agitation between us.

Truth to be ſought impartially from all parties.

In forming my mind upon the great and important ſubject of the *Rights of Man*, I have endeavoured to draw knowledge and information from every ſource, from which I thought

I thought it likely to ſpring. *Nullius addictus jurare in verba magiſtri,* I as readily admit of a true propoſition laid down by a tory, as by a whig, by a puritan as by a church-man, by a leveller as by a royaliſt. If my labours, and reſearches do in the ſmalleſt degree contribute to ſettle the minds of my countrymen upon the ſubject, that reward will ſatisfy my proudeſt expectations. * " Whenever " the intereſts of truth and liberty are at- " tacked, it is to be wiſhed, that ſome would " ſtand up in their defence, whether they ac- " quit themſelves better, than their prede- " ceſſors in the ſame good old cauſe or not. " New books, in defence of any principles " whatever, will be read by many perſons, " who will not look into *old books* for the " proper anſwers to them."

We are aſſured, from the unerring authority of the holy Bible, that the days of man have been much curtailed, ſince he was firſt formed by his creator; and we may rationally infer, that the natural ſtrength, vigor, and power of that body, which was to laſt many hundred years, were greater, than what are merely requiſite to ſupport it through a tenth part of that period; but I can no where

* Preface to Dr. Prieſtley's Eſſay on the Firſt Principles of Government.

trace

The intellectual powers of man are now neither more nor leſs perfect, than they formerly were.

trace even a ſuggeſtion, that the minds and intellects of our antediluvian anceſtors were more vigorous or perfect, than thoſe of their poſterity; though from the exceſs of their longevity they muſt have had the advantage of experimental information: yet Solomon, who was endowed with more wiſdom, than any of his predeceſſors, exiſted long after this abbreviation of the natural days of man. I

Antiquity not concluſive evidence of truth.

am free to own, it has ever appeared to me as unwarrantable to maintain, that the true principles of civil and religious liberty have only been diſcloſed to the preſent generation, as to attribute an excluſive preference to all the doctrines of our predeceſſors, upon the mere ſcore of antiquity. Every ſucceeding age muſt neceſſarily have the advantages of obſervation and experience; but beyond theſe I can diſcover no traits, that mark the ſuperiority of the preſent age above any that have preceded it*. The more cloſely we

* " *For as our modern wits behold, mounted a pick-back on* " *the old,* &c. Hudib. 1ſt pt. 2d canto. v. 71, 72. A ban- " ter on thoſe modern writers, who, as Sir W. Temple " obſerves, *(Eſſay on ancient and modern Learning)*, that as " to knowledge, the moderns muſt have more, than the " antients, becauſe they have the advantage both of " theirs and their own; which is commonly illuſtrated " by a dwarf's ſtanding upon a giant's ſhoulders, or " ſeeing more or farther than he." Grey's Hud. v. 1. p. 104.

attend

attend to the various excellencies of individuals within our own acquaintance, the more fully we ſhall be convinced, that the innate powers of men have not varied for theſe two thouſand years; but that they have ever acquired a degree of excellence proportioned to the variety of the circumſtances, that called them into action. Thus are obviouſly traced the various cauſes, which through the ſucceſſion of ages, have given birth to, encouraged, and perfected the different arts and ſciences. I cannot help differing, upon this point, from Dr. Prieſtley *, who ſays, "That "the human ſpecies itſelf is capable of a "ſimilar and unbounded improvement; "whereby mankind in a latter age are "greatly ſuperior to mankind, in a former "age, the individuals being taken at the "ſame time of life. Of this progreſs of the "ſpecies, brute animals are more incapable, "than they are of that relating to individuals. No horſe of this age ſeems to "have any advantage over other horſes of "former ages; and if there can be any improvement in the ſpecies, it is owing to "our manner of breeding and training them: "but a man at this time, who has been "tolerably well educated, in an improved

Our preſent exiſtence gives us no ſuch advantage over our predeceſſors as Dr. Prieſtley teaches.

* Eſſay on the Firſt Principles of Government, p. 2.

"Chriſtian

" Chriſtian country, is a being poſſeſſed of " much greater power, to be, and to make, " happy, than a perſon of the ſame age in " the ſame or any other country ſome cen- " turies ago."

Hence, aſſured that this learned philoſopher will not refuſe me, on account of my differing from ſome of his opinions, the common ſuperiority of reaſoning, which my exiſtence in the preſent age gives me over all my anceſtors and predeceſſors, (though unconſcious of the advantage) I lay in my full claim to it, and ſhall endeavour to ſupport it more by the perſpicuity and ſtrength of arguments gleaned from others, than by my own.

The deſign of the work.

In the proſecution of my deſign, I ſhall follow the order, which the ſubject ſeems plainly to preſcribe: I ſhall conſider man, firſt, in the pure ſtate of nature; then, in the general ſtate of ſociety; and laſtly, in the ſtate of the Engliſh government and conſtitution; and as every Engliſhman, or perſon living under the protection of the Engliſh government, aſſumes or contracts a relative duty and obligation to the community, of which he is a member, I ſhall endeavour to enforce the indiſpenſible coercion of theſe duties and obligations, by the examination and expoſition of the inſtances, in which they may be infringed

and

and violated by crimes againſt the ſtate; and I ſhall conclude by a faithful narrative of the effects already produced in this iſland, by the diſſemination of the very doctrines, which are now attempted to be revived with ſuch infatuated zeal.

If Britons ſhall chuſe again to get up the old tragedy, I ſhall but have given in the liſt of the *dramatis perſonæ*, who are moſt qualified to keep up the genuine ſpirit of the play.

A cool and collected reviſal of the argument may determine my countrymen, either to the repetition, or irrevocable damnation, of the piece.

CHAP.

CHAP. I.

OF THE STATE OF NATURE.

Reaſons for conſidering the ſubject.

*THE contemplation of the Britiſh conſtitution in its origin, in its ſtructure and in its effects, is the important and the arduous

* The trite adage of *nil ſub ſole novum* is more emphatically applicable to the ſubject under our preſent conſideration, than to any other. This ſubject has in all ages been the primary object of the politician, the hiſtorian, and the philoſopher; and in many ages, ſuch have been the exalted ideas entertained of its dignity, that it has conſtituted a very conſiderable part of theology. As in religion, the written word of God, which, from its divine inſpiration, muſt eſſentially bear a determined and unequivocal meaning, is in diſputes and differences often reſorted to, and modified by the appellants to its authority, ſo as to colour, countenance, and ſupport the moſt extravagant and contradictory opinions; ſo few or no political errors, treaſons, rebellions, or uſurpations have at any time been attempted to be juſtified, but by appealing and reſorting to the authority of the *Rights of Man*. Since the ſubject has been ſo often and ſo fully conſidered by others, I ſhall think I give more ſatisfaction to the public by collecting and arranging their opinions upon it, than by endeavouring to dreſs and ſerve up the old ſubſtance in the diſguiſe of ſome new faſhion. I ſhall therefore

arduous taſk, which I have undertaken. * "The duty incumbent upon all, who have leiſure and abilities, to endeavour to underſtand, in order to maintain it in perfection, are thoſe high motives, by which Engliſhmen are called upon to examine the principles, to ſtudy the contrivance, and to contemplate the operations of that vaſt political machine, which is ſo much the envy of others, and which ſhould be the ſupreme admiration of ourſelves, particularly at a time, when a party of diſcontented ſpirits, under the aſſumed character of philoſophers, are labouring to abuſe what they do not underſtand, to point out imperfections, which have no exiſtence,

therefore offer no other apology for preferring what others, and even I myſelf, have on other occaſions publiſhed upon the ſubject. My primary object in making this publication is to form and fix the minds of my countrymen upon the moſt important of all civil and political ſubjects, and to do away the effects of uncertainty, confuſion, and error, under which ſome of them now labour. I moſt cordially adopt the ſentiments of Dr. Price, when he ſays, in the diſcourſe already alluded to, (p. 13) "Happier far muſt he be, if at the ſame time he has reaſon to believe, he has been ſucceſsful, and actually contributed by his inſtructions, to diſſeminate among his fellow creatures juſt notions of themſelves, of their rights, of religion, and the nature and end of civil government."

* Dr. Tatham's Letters to Mr. Burke, p. 7.

to find defects inſtead of excellencies, to traduce its general worth, and to make our countrymen diſſatisfied with what they ought to love." But as the nature, properties, and effectsof the moſt ingenious piece of mechaniſm can only be explained upon thoſe mathematical principles, upon which it was conſtructed, and which had their exiſtence, independent of this particular application of them: ſo * "before intelligent beings exiſted, they were poſſible; they had therefore poſſible relations, and conſequently poſſible laws. Before laws were made, there were relations of poſſible juſtice. To ſay, that there is nothing juſt or unjuſt, but what is commanded or forbidden by poſitive laws, is the ſame as ſaying, that before the deſcribing of a circle, all the radii were not equal."

The ſtate of nature merely theoretical and metaphyſical.

This ſtate of nature, in which all philoſophers conſider man, and the rights and properties inherent in this nature, is a mere theoretical and metaphyſical ſtate, pre-exiſting only in the mind, before the phyſical exiſtence of any human entity whatever. As this ſtate of nature then never had any real exiſtence, ſo alſo the various qualities, properties, rights, powers, and adjuncts annexed unto it, are

* Monteſq. Spirit of Laws, b. i. p. 2.

mere

mere creatures of the imagination, attributable only to man in this ideal ſtate of ſpeculation: they bear the ſame ſort of analogy to the phyſical ſtate of man in ſociety, as principles and properties of mathematical points and lines bear to the practical rules of mechanics. As well might we attempt to handle and manufacture a mathematical point, as to move only upon the principles of this ſtate of nature, being placed by the beneficence of our Creator in the phyſical ſtate of ſociety. Some of our greateſt philoſophers, as is often the caſe, to avoid pleonaſm, and in the full glare of their own conviction, have omitted to ſay, in expreſs words, that this ſtate of nature, in which they conſidered man in the abſtract, never had an actual, phyſical, or real exiſtence in this world; and this omiſſion has, perhaps, occaſioned the error of many modern illuminators, who, from ignorance, have confounded the two ſtates together, or, from deſigned malice, have tranſplanted the attributes and properties of the one into the other.

To ſtate the opinions of theſe philoſophers upon the Rights of Man, in this ſtate of nature, is to demonſtrate, that they conſidered it as pre-exiſting and antecedent to the phyſical ſtate of man's real exiſtence.

* "To underſtand political power right, and derive it from its original, we muſt conſider what ſtate all men are naturally in, and that is, a ſtate of perfect freedom to order their actions, and diſpoſe of their poſſeſſions and perſons, as they think fit, within the bounds of the law of nature, without aſking leave or depending upon the will of any other man; a ſtate alſo of equality, wherein all the power and juriſdiction is reciprocal, no one having more than another; there being nothing more evident, than that creatures of the ſame ſpecies and rank, promiſcuouſly born to all the ſame advantages of nature, and the uſe of the ſame faculties, ſhould be equal one amongſt another, without ſubordination or ſubjection."

† "Prior to all thoſe laws are thoſe of nature, ſo called, becauſe they derive their force entirely from our frame and being. In order to have a perfect knowledge of theſe laws, we muſt conſider man before the eſtabliſhment of ſociety: *the laws received in ſuch a ſtate would be thoſe of nature.*"

From the phyſical formation of Adam and Eve the ſtate of pure nature was phyſically impoſſible.

It requires no argument to prove, when the phyſical civilized ſtate of ſociety commenced; for, from the commencement of

* Locke upon Civil Government, p. 168.
† Monteſquieu's Spirit of Laws.

this

this muſt be dated the impoſſible exiſtence of the ſtate of pure nature. Mr. Locke eſtabliſhes this commencement from the formation and co-exiſtence of our firſt parents, Adam and Eve; and he draws the neceſſity of it from the intrinſic nature and exigencies of man, as he has been actually formed and conſtituted by his Creator. * "God having made man ſuch a creature, that, in his own judgment, it was not good for him to be alone, put him under ſtrong obligations of neceſſity, convenience, and inclination, to drive him into ſociety, as well as fitted him with underſtanding and language to continue and enjoy it. The firſt ſociety was between man and wife; which gave beginning to that between parents and children; to which, in time, that between maſter and ſervant came to be added." This fact then is uncontrovertible, that the only individual, who can be ſaid, in any ſenſe, to have exiſted in the ſtate of nature, was Adam, before the formation of his wife. But how theſe rights could be exerciſed by him in that forlorn ſtate of ſolitude, I know as little, as I do of the period of its duration. When, therefore, we ſpeak generally of the Rights of Man, we ought to be underſtood to

Man phyſically framed by God for ſociety.

* Locke of Civil Government, c. vii. p. 188.

The exercise of rights imports the necessity of society.

speak of those rights, which are attributable to man in the civilized state of society. Thus every discussion of the actual exercise of the Rights of Man imports necessarily the * *contemplation of the social civil man, and no other*. And accordingly, Mr. Payne, having derided the futile and inept attempt to deduce the Rights of Man from any given period of antiquity, says, † "The fact is, that portions of antiquity, by proving every thing, establish nothing. It is authority against authority all the way, till we come to the divine origin of the Rights of Man at the creation. Here our enquiries find a resting place, and our reason finds a home. If a dispute about the Rights of Man had arose at the distance of an hundred years from the creation, it is to this source of authority they must have referred, and it is to the same source of authority, that we must now refer."

Having thus distinctly marked the line of difference between the state of nature and the state of civil society, I shall proceed to state fully and clearly what rights are attributable to, or inherent in man in this state of nature. When writers talk of the transition of man

* Burke's Reflections on the Revolution in France, p. 87.

† Payne's Rights of Man, p. 45.

from

from one of theſe ſtates to the other, they do not mean to allude to any given time or occaſion, in which mankind actually paſſed from the one to the other; but they do it by way of methodizing their ideas upon the ſubject; as philoſophers, in diſcuſſing the nature of man, or any other created being, firſt conſider the exiſtence, before they enter upon the peculiar properties or attributes of the exiſting being, upon this axiom, that *prius eſt eſſe, quam eſſe talis*; although it be known to every one, that the phyſical exiſtence and ſpecific modification of every created being are in reality ſimultaneous. In the like manner do they mention, in this ſuppoſed tranſition, the retention of ſome of their rights, and the ſurrender of others. * "From this ſhort review, it will be eaſy to diſtinguiſh between that claſs of natural rights, which man retains after entering into ſociety, and thoſe, which he throws into common ſtock, as a member of ſociety. Of the diſtinction of theſe two ſorts of rights I ſhall hereafter have occaſion to take notice."

In this theoretic ſtate of pure nature, the moſt perfect equality of mankind muſt neceſſarily exiſt; becauſe it repreſents man in a general abſtract point of view, that eſſentially pre-

Men viewed in the abſtract as equal, are to be conſidered eſſentially in the ſtate of nature.

* Payne's Rights of Man, p. 49.

cludes all thoſe circumſtances, which, in the civilized ſtate of ſociety, form the various grounds of diſtinction, ſuperiority, and pre-eminence, amongſt individuals. * The fundamental idea of man, in this ſtate of nature, muſt have been that of equality with his fellow creatures; and, as a rational being, he muſt have been impreſſed with a conſcious idea of his ſuperiority over all irrational objects; and, by inference, he muſt have inclined rather to a ſimilar precedency over his fellow creatures, than to a ſubmiſſion to them; for the effects of weakneſs, apprehenſion, and fear, which ſome philoſophers have attributed to man in the ſtate of nature, muſt have ariſen from the internal ſenſe of, and reflection upon mortality, and the principle of ſelf preſervation; not from an original or innate tendency to ſubjection to any created object. The idea of ſuperiority was prior in man to that of dependence. The latter could never have occurred to him, till he had found out his wants, till he had felt his inſufficiency to ſupply them. Independence then was eſſential to the ſtate of nature; and hence is deduced the original right of option,

Independence eſſential to the ſtate of nature.

* Letter to Sir George Savile upon the Allegiance of a Britiſh Subject, by the Author, Printed in 1778.

to

to whom each one ſhall chuſe to ſurrender his independence by a voluntary ſubmiſſion and ſubjection.

What natural rights are ſuppoſed to be retained by man, after his tranſition from the ſtate of nature to that of ſociety.

In this theoretical, or ſuppoſed tranſition of man from the ſtate of nature to the ſtate of ſociety, ſuch natural rights, as the individual actually retains independently of the ſociety, of which he is a member, are ſaid to be retained by him, as a part of thoſe rights, which he is ſuppoſed to have poſſeſſed in the ſtate of nature. Such are the free and uncontrouled power of directing all his animal motions; ſuch the uninterrupted communication and intercourſe of the ſoul with its Creator; ſuch the unreſtrained freedom of his own thoughts: for ſo long as an individual occaſions no harm, and offers no offence to his neighbour, by the exerciſe of any of theſe rights, the ſociety cannot controul nor check him in the free exerciſe of them. * "The natural rights, which he retains, are all thoſe, in which the power to execute is as perfect in the individual, as the right itſelf. Among this claſs, as is before mentioned, are all the intellectual rights, or rights of the mind; conſequently, religion is one of thoſe rights. The natural rights, which are not retained, are all thoſe,

* Payne's Rights of Man, p. 49.

in which, though the right is perfect in the individual, the power to execute it is defective: they anſwer not his purpoſe. A man, by natural right, has a right to judge in his own cauſe; and ſo far, as the right of the mind is concerned, he never ſurrenders it; but what availeth it him to judge, if he has not power to redreſs? He therefore depoſits this right in the common ſtock of ſociety, and takes the arm of ſociety, of which he is a part, in preference and addition to his own. Society grants him nothing. Every man is a proprietor in ſociety, and draws on the capital as a matter of right."

* "We have now, in a few words, traced man from a natural individual to a member of ſociety; and ſhewn, or endeavoured to ſhew, the quality of the natural rights retained, and of thoſe which are exchanged for civil rights." But in this tranſition, the ſurrendered or exchanged rights were ſo irrevocably transferred from the individual to the body at large, that it no longer remained at the liberty or option of individuals to reclaim, either in the whole, or in part, thoſe rights, which had ſo become unalienably veſted in the community.

* Payne's Rights of Man, p. 50.

It is as ſingular, as it is unaccountable, that ſome of the illuminating philoſophers of the preſent day ſhould, even under the Britiſh conſtitution, claim and inſiſt upon the actual exerciſe of theſe *natural Rights of Man*, when it is notorious, even to demonſtration, that the exerciſe of them would be eſſentially deſtructive of all political and civil liberty, could they be really brought into action. For it is ſelf-evident, that the perfect equalization of mankind, ſuch as is attributable to this imaginary and merely ſpeculative ſtate of natural freedom, would prevent every individual from acquiring an excluſive right or property in any portion of this terraqueous globe, or in any other particle of matter, beyond that of his own corporeal frame. Liberty preſuppoſes the poſſibility of acquiring and reaping the advantages of property; a right of receiving and giving aid and protection; and a power of bettering one's own condition, and providing for one's family: it preſuppoſes virtue, in holding out its rewards; and the rewards of virtue neceſſarily induce diſtinction and preference of the virtuous over others, which are eſſentially contradictory to perfect equalization. The extent of this propoſition, *men are all born equally free*, muſt include each individual human being, or it ſays

The exerciſe of theſe natural rights impoſſible in the ſtate of ſociety.

ſays nothing; but it admits of no other, than that original ſenſe of equality inherent in the metaphyſical eſſence of man, which is not applicable to the phyſical exiſtence of ſocial man, ſince it is eſſentially incompatible with the exiſtence of ſociety, which denominates man ſocial. In this ſenſe, Mr. Payne ſays truly, * "Every hiſtory of the creation, and every traditionary account, whether from the lettered or unlettered world, however they may vary in their opinion or belief of certain particulars, all agree in eſtabliſhing one point —the *unity of man*; by which I mean, that man is all of one degree, and conſequently, that all men are born equal, and with equal natural rights, in the ſame manner as if poſterity had been continued by creation inſtead of generation, the latter being only the mode, by which the former is carried forward; and conſequently, every child born into the world muſt be conſidered as deriving its exiſtence from God. The world is as new to him, as it was to the firſt man, that exiſted, and his natural right in it is of the ſame kind."

The admiſſion of theſe principles into the ſtate of civil ſociety would prevent the very poſſibility of thoſe ſocial virtues, out of which

* Payne's Rights of Man, p. 46.

ariſes the moral and political harmony of the univerſe. To view this with an impartial eye, we muſt make ample allowances for the exigencies, and even the foibles of human nature. We are ſo conſtituted by an all-wiſe Creator, that, although we act generally upon certain fundamental principles, that are eſſentially invariable, yet the prevalence of early prejudices, the force of example and habit, the impulſe of paſſion, and the allurement of pleaſure, create a great diverſity in the cuſtoms, manners, and actions of men. In ſome ſocieties, the philanthropy of peace is never broken into; others are in an uninterrupted ſtate of warfare; ſome ſocieties float in a ſea of pleaſurable delights, whilſt others glory in the rudeſt practices, of which their nature is capable; one ſociety countenances only the embelliſhment of the mind, whilſt another encourages only the improvement of the body; ſome ſocieties form themſelves principally upon religious inſtitutions, whilſt others ſhew not even the moſt remote knowledge of a deity *. It is then to be expected, that

Various principles of government formed on the diverſity of men's diſpoſitions.

* I have been informed by ſeveral German miſſioners, who had ſpent many years in the inland parts of California, that, contrary to their own opinions and expectations, and contrary to the generally received notion, that every man has ſome idea of a deity, they could not diſcover

that our practical ideas of the civilized ſtate of ſociety will be generally drawn from the practical knowledge, we have of different ſocieties. Under this influence, an Engliſhman will conceive no liberty, where there is no law, no property, no religion. The preſervation of theſe conſtitutes the ſum total of thoſe rights and liberties, for which he will even ſacrifice his life. Upon what ground then, ſhall an Engliſhman, even in theory, admit principles into civil government, which would juſtify the peaſant in ſeizing the lands of his lord, the ſervant in demanding the property of his maſter, the labourer that of his employer, the robber in purloining his neighbour's purſe, the adulterer in defiling the wife of another, the outlawed in reviling, contemning, and violating the laws of the community.

An Engliſhman conceives no liberty where there is no law, no property, no religion.

The greateſt miſchiefs ariſe from the miſunderſtanding and miſapplication of terms. Millions of lives have been ſacrificed in diſputes and controverſies upon the tenor and tendency of words. General abſtract propoſitions are ſupereminently liable to this fatal evil, as I ſhall hereafter have occaſion to

Miſchiefs ariſing from the miſunderſtanding and miſapplication of general propoſitions.

cover the moſt remote or faint trace of any public or private cult or worſhip amongſt the natives of this extenſive country.

ſhew,

ſhew, in many calamitous inſtances of our own country. The uſe of words and terms can only be, to convey to others the real meaning and purport of what we think ourſelves. Thus if I happen, by an unuſual and awkward combination of words and phraſes, to expreſs my meaning and ſentiments upon a ſubject to a third perſon, provided I am really underſtood, and my ſentiments are admitted, I do not ſee upon what other ground, than that of grammar or ſyntax, a diſpute can be inſtituted. And in the ſubject under our preſent conſideration, if any other terms had been uſed to expreſs the *natural Rights of Man, or the ſtate of nature,* the whole animoſity of the adverſe diſputants would have ſubſided, under the conviction that neither differed in opinion ſubſtantially from the other. I have read over moſt of the late publications upon the ſubject; and I do not find one of any note or conſequence, that does not in fact and ſubſtance admit this ſtate of nature, to which they annex or attribute theſe *indefeaſible Rights of Man,* to be a mere imaginary ſtate of ſpeculation. Much ill blood would have been avoided, much labour and pain have been ſpared, and many lives have been preſerved, if any other, than the

The preſent conteſt ariſes from the words, *natural and nature,* being miſunderſtood or miſapplied.

the epithet *natural* had been applied to theſe rights, and this ſtate.

The bulk of mankind think of no other rights, than ſuch as they can enjoy, which are *ſocial* rights.

The bulk of mankind are little able, and leſs habituated, to analize the import and tendency of words and phraſes; and few amongſt them will ſeparate the idea, which they conceive the word *natural* conveys, from the ſtate of their phyſical exiſtence. They will plainly argue, that ſuch as God hath made them, ſuch they are; nor do they think of, nor demand any other rights, than ſuch, as God hath given them for the purpoſe, for which in his goodneſs he created them. The practical doctrine from ſuch argument will be, what I before quoted from Mr. Locke. "God having made man ſuch a creature, that, in his own judgment, it was not good for him to be alone, put him under ſtrong obligations of neceſſity, convenience, and inclination, to drive him into ſociety, as well as fitted him with underſtanding and language to continue and enjoy it." Thus, perhaps, more properly, though leſs technically ſpeaking, we come to conſider man in his *real natural* ſtate, which is that of ſociety. For Buchanan ſays truly:*

* Buchanan of the due Privilege of the Scots Government, p. 198.

"Firſt

" Firſt of all, then, we agree, that men by *nature* are made to live in ſociety together, and for a communion of life." * " Hitherto we have ſpoken only (and that but in part) of the natural Rights of Man. We have now to conſider the *civil* Rights of Man, and to ſhew how the one originates out of the other. Man did not enter into ſociety to become worſe, than he was before, nor to have leſs rights, than he had before, but to have thoſe rights better ſecured. His natural rights are the foundation of all his civil rights." Theſe will be the ſubject of the enſuing chapter.

* Payne's Rights of Man, p. 48.

CHAP.

CHAP. II.

OF THE STATE OF SOCIETY.

SOCIETY was the neceſſary conſequence of the experimental diſcovery of man's wants and inſufficiency to ſupply them in the theoretical ſtate of *pure* nature. Theſe wants were coeval with his phyſical exiſtence; for, as Mr. Locke ſays, God ſo made man, *as to put him under ſtrong obligations of neceſſity, convenience, and inclination, to drive him into ſociety, as well as fitted him with underſtanding and language to continue and enjoy it.* And *here,* as Mr. Payne allows, *Our enquiries find a reſting place, our reaſon finds a home.* This inſufficiency of individuals ſought a remedy in the aſſiſtance of others; mutual aſſiſtance brought on obligations, and obligations produced dependance. The diverſity of age, ſtrength, or talents, probably gave the firſt ſuperiority over a promiſcuous multitude (for parentage certainly gave the firſt ſuperiority over individuals); this multiplied and varied, as the objects who poſſeſſed it; envy ever followed the poſſeſſor; and the conſequences broke

Origin of ſociety.

broke out into ſtrifes, feuds, and wars. So * "as ſoon as mankind enter into a ſtate of ſociety, they loſe the ſenſe of their weakneſs; the *equality ceaſes*, and then commences the ſtate of war." Theſe ruinous effects increaſed, as mankind was multiplied; and the natural tendency to ſuperiority urged individuals to reduce their neighbours into a ſtate of ſubjection. Still was man ſenſible of his own inſufficiency, and he applied in need to his neighbour for aſſiſtance. This gradually formed men into diſtinct bodies: each body had their own reſpective views and intereſts; and hence aroſe the difference of communities or nations. Origin of nations.

Societies then once formed, the intereſts of the individuals forming them became united in one common centre; they dropped the former ſenſe of that weakneſs and indigence, which had driven them into ſociety, and aſſumed a conſequence (which I call political) from the newly acquired ſtrength of their collected aſſociates. The ſubſiſtence and preſervation of their own community was their firſt concern; to defend themſelves againſt the power and encroachments of others was their next. Thus did their collective exi- Origin of government.

* Monteſq. Spirit of Laws, b. i. 26.

gencies enforce the neceſſity of order and government.

The rights of individuals in the ſtate of nature transferred to the community in that of ſociety.

It is a poſtulatum, that when men formed themſelves into ſociety, their natural rights were not given up nor deſtroyed, but were transferred only from the individual to the body at large. Whatever the former had an indefeaſible right to do in the ſtate of nature, the latter has an indefeaſible right to do in the ſtate of ſociety; and throughout this ſtate of ſociety, the general intereſt of the community is the principle, upon which the conſtitution and particular laws of each ſtate muſt be founded. The private conſiderations of individuals were given up, in the exchange of our natural rights, for the improved liberties of civil intercourſe and ſociety.

* " Men being, as has been ſaid, by nature all free, equal, and independent, no one can be put out of his eſtate, and ſubjected to the political power of another, without his own conſent. The only way, whereby any one diveſts himſelf of his natural liberty, and puts on the bonds of civil ſociety, is by agreeing with other men, to join and unite into a community, for their comfortable, ſafe, and peaceable living one amongſt ano-

* Locke of Civil Government, p. 194.

ther,

ther, in a ſecure enjoyment of their properties, and a greater ſecurity againſt any, that are not of it. This any number of men may do, becauſe it injures not the freedom of the reſt; they are left as they were, in the liberty of the ſtate of nature. When any number of men have ſo conſented to make one community, or government, they are thereby preſently incorporated, and make one body politic, wherein the majority have a right to act, and conclude the reſt.

The act of the majority concludes the whole.

" For when any number of men have, by the conſent of every individual, made a community, they have thereby made that community one body, with a power to act as one body, which is only by the will and determination of the majority. For that, which acts any community, being only the conſent of the individuals of it, and it being neceſſary to that, which is one body, to move one way, it is neceſſary the body ſhould move that way, whither the great force carries it, which is the conſent of the majority: or elſe it is impoſſible it ſhould act, or continue one body, one community, which the conſent of every individual, that united into it, agreed that it ſhould, and ſo every one is bound, by that conſent, to be concluded by the majority. And therefore we ſee, that in

aſſemblies impowered to act by poſitive laws, where no number is ſet by that poſitive law, which impowers them, the act of the majority paſſes for the act of the whole, and of courſe determines, as having, by the law of nature and reaſon, the power of the whole.

" And thus every man, by conſenting with others to make one body politic, under one government, puts himſelf under an obligation to every one of that ſociety, to ſubmit to the determination of the majority, and to be concluded by it; or elſe this original compact, whereby he with others incorporates into one ſociety, would ſignify nothing, and be no compact, if he be left free, and under no other ties, than he was in before in the ſtate of nature.

" Whoever, therefore, out of a ſtate of nature, unite into a community, muſt be underſtood to give up all the power neceſſary to the ends, for which they unite into ſociety to the majority of the community, unleſs they expreſsly agreed in any number leſs than the majority. And this is done by barely agreeing to unite into one political ſociety, which is all the compact that is, or need be, between the individuals, that enter into or make up a common-wealth. And thus, that, which begins and actually conſtitutes any political ſociety, is nothing but the conſent of any

What conſtitutes a community and lawful government.

number of freemen, capable of a majority, to unite and incorporate into ſuch a ſociety. And this is that, and that only, which did, or could give beginning to any lawful government in the world."

Every man has the uncontrouled right of diſcuſſing theſe ſubjects with freedom: and in the progreſs of my inveſtigation, I readily declare my opinion, that my predeceſſors of all ages, and of all deſcriptions, have ſeen, underſtood, and explained them, with as much perſpicuity and preciſion, as the moſt illuminated philoſopher of theſe diſcovering days of innovation.

Theſe ſubjects diſcuſſed by our predeceſſors as well as by modern illuminators.

* " With Cicero, I think there is nothing done on earth more acceptable to the great God, who rules the world, than the aſſociations of men legally united, which are called *civil incorporations*, whoſe ſeveral parts muſt be as compactly joined together as the ſeveral members of our body, and every one muſt have their proper function, to the end there may be a mutual co-operating for the good of the whole, and a mutual propelling of injuries, and a foreſeeing of advantages, and theſe to be communicate, for engaging the benevolence of all amongſt themſelves."

* Buchanan of the due Privilege of the Scots Government in England, p. 179.

Although we are now conſidering the Rights of Man in the real actual ſtate of his phyſical exiſtence and political incorporation with ſome community, we are not to loſe ſight of the rights, which he enjoyed in the pure ſtate of nature; for as I before obſerved, theſe rights were never given up nor deſtroyed, but were transferred only from the individual to the body at large. Now although there have exiſted many differences and diſputes about the rights of the community, or of the people; yet I find all writers unanimous in tracing or deducing them from Almighty God, as the ſource of all right, power, and authority whatſoever: for to whom we owe our exiſtence, to him we owe all the benefits and advantages of that exiſtence. *"Seeing, the apoſtle ſays, (Rom. xiii. 1.) that all power is from God, laws, which are made by men (who for this end and purpoſe receive their power from God) may alſo be affirmed to be made by God, as ſaith the author of a book going under the name of *Auctor Cauſarum*; whatſoever the ſecond doth, that doth the firſt cauſe, but in a more excellent manner." And †"*There is no power but of God*; that is, no

All power originally from God.

* Fort. de Laud. Leg. Ang. c. iii. p. 5.

† Milton's Defence of the People of England, p. 64.

form,

form, no lawful conſtitution of any government. The moſt ancient laws, that are known to us, were formerly aſcribed to God as their author. For the law, ſays Cicero in his Philipp. is no other than a rule of well grounded reaſon, derived from God himſelf, enjoining whatever is juſt and right, and forbidding the contrary. So that the inſtitution of magiſtracy is *jure divino*, and the end of it is, that mankind might live under certain laws, and be governed by them; but what particular form of government each nation would live under, and what perſons ſhould be entruſted with the magiſtracy, without doubt, was left to the choice of each nation."

Inſtitution of magiſtracy *jure divino*.

The choice of government in the community.

It is as far from being a modern diſcovery, as it is from being a falſe poſition, that all civil or political power is derived from the people. So Sir John Forteſcue ſaid many centuries ago. * "As in the natural body (according to the philoſopher) the heart is the firſt thing, which lives, having in it the blood, which it tranſmits to all the other members, thereby imparting life and growth and vigour; ſo, in the body politic, the firſt thing, which lives and moves is the intention of the people, having in it the blood, that is,

* Forteſc. de L. L. Angliæ, c. xiii. c. 22.

the *prudential* care and proviſion for the public good, which it tranſmits and communicates to the head, as the principal part, and to all the reſt of the members of the ſaid body politic, whereby it ſubſiſts and is invigorated. And as the head of the body natural cannot change its nerves or ſinews, cannot deny to the ſeveral parts their proper energy, their due proportion and aliment of blood; neither can a king, who is the head of the body politic, change the laws thereof, nor take from the people what is theirs by right, againſt their conſents. Thus you have, Sir! the formal inſtitution of every political kingdom, from whence you may gueſs at the power, which a king may exerciſe with reſpect to the laws and the ſubject: for he is appointed to protect his ſubjects in their lives, properties and laws; for this very end and purpoſe, he has the delegation of power from the people; and he has no juſt claim to any other power but this." Theſe fundamental principles of government were not then firſt diſcovered by modern theoriſts, who would aim at the abolition of all kingly power; but they were inculcated between three and four hundred years ago by a ſage and learned chancellor of England, into the heir apparent to the crown, at a time, when the

All power delegated from the people.

the ſlighteſt deviation from the ſtraight line of conſtitutional polity would, in the judgment of a Forteſcue, have more effectually weakened the throne, than the moſt deſperate and inhuman efforts of the different competitors for the crown, who were actually then deluging the nation with blood, and overwhelming it with wretchedneſs. This fundamental principle of general government has been ſo unexceptionably admitted by perſons of every deſcription, that it ſeems to have been received as a political axiom. * "By the law of nature God hath ordained, that there ſhould be political government unto one or more, according to particular forms thereof, as *monarchy*, *ariſtocracy*, *democracy*, or *mixt*; wherein is to be noted, that the ordination of God, by the law of nature, doth give political *power* unto the *multitude immediately*, and *by them* mediately to one or more."

Sovereignty or government as eſſential to ſociety as ſociety is to mankind.

As eſſential as ſociety is to the phyſical ſtate or condition of man, ſo eſſential is ſovereignty or government to ſociety. † "People, if they would engage the protection of the whole body, and join their force in enterprizes and undertakings calculated for the common good, muſt voluntarily reſign ſome

* Parſon's anſwer to Sir Edward Coke, c. ii. p. 26.
† Prieſtly upon Government, p. 6.

part

part of their natural liberty, and ſubmit their conduct to the direction of the community; for without theſe conceſſions, ſuch an alliance, attended with ſuch advantages, could not be formed." The weight of authority, for this fundamental principle of government, *all power is from the people*, is almoſt unexceptionable: the few, who have at any time queſtioned or denied it, have either miſconceived it themſelves, or in the heat of great contention, have obſtinately refuſed to ſubmit even to the truth of their antagoniſts. Like other truths, this has frequently met with oppoſition and reſiſtance from the attempts of the ignorant to miſrepreſent, and the wicked to abuſe it.

When I lament the pliancy, with which many of my well meaning countrymen are ſeduced by the ſophiſticated arts and malice of ſome few, I feel at the ſame time a ſatisfaction at their diſpoſition to ſeek the truth, which inſpires me with an uncommon ardor to ſet it before them in ſo clear a light, that they ſhall not ſhut their eyes againſt it. * " *Nec tam pertinaces fore arbitror, ut clariſſi-*

* Lactanctius.—If to my more informed readers I appear guilty of pleonaſm, I beg to be underſtood to have written this work with a view to point out the true road to thoſe, that are ignorant, or have been miſled.

mum

mum ſolem, ſanis atque patentibus oculis videre ſe negent."

* "That ſociability in mankind, or inclination to live in company, is by nature, and conſequently ordained by God, for the common benefit of all, is an eaſie thing to prove; ſeeing that all ground of realms and common-wealths dependeth of this point, as of their firſt principle; for that a common-wealth is nothing elſe, but the good government of a multitude gathered together, to live in one; and therefore all old philoſophers, law-makers, and wiſe-men, that have treated of government or common-wealths; as Plato in his ten moſt excellent books, which he wrote of this matter, intituling them, Of the Common-wealths; and Marcus Cicero, that famous counſellor, in other ſix books, that he writ of the ſame matter, under the ſame title; and Ariſtotle, that perhaps, excelleth them both, in eight books, which he called his Politiques: all theſe, I ſay, do make their entrance to treat of the common-wealth affairs, from this firſt principle, to wit, *That man by nature is ſociable, and inclined to live in company.*

" Theſe two points then are of nature; Government is of nature.

* Dolman's Conference about the next Succeſſion to the Crown of England, firſt printed in 1594, and reprinted in 1681.

to

to wit, the common-wealth and government of the ſame by magiſtrates; but what kind of government each common-wealth will have, whether democratia, which is popular government by the people itſelf, as Athens, Thebes, and many other cities of Greece had in old time, and as the Cantons or Switzers at this day have; or elſe ariſtocratia, which is the government of ſome certain choſen number of the beſt; as the Romans many years were governed by conſuls and ſenators, and at this day the States of this country of Holland do imitate the ſame; or elſe monarchia, which is the regiment of one, and this again either of an emperor, king, duke, earl, or the like: theſe particular forms of government, I ſay, are not determined by God or nature, as the other two points before; for then they ſhould be all one in all nations as the other are, ſeeing God and nature are one to all (as often hath been ſaid) but theſe particular forms are left unto every nation or country to chuſe that form of government, which they ſhall like beſt, and think moſt fit for the natures and conditions of their people, which Ariſtotle proveth throughout all the ſecond and fourth books of his Politiques, very largely laying down divers kinds of governments in his days, as namely, in Greece, that of the Mileſians, Lacedemonians, Candians,

The particular form of government is at the option of each ſociety.

Candians, and others, and ſhewing the cauſes of their differences, which he attributeth to the diverſity of men's natures, cuſtoms, educations, and other ſuch cauſes, that made them make choice of ſuch or ſuch forms of government.

" So as of all this there can be no doubt, but that the common-wealth hath power to chuſe their own faſhion of government, as alſo to change the ſame upon reaſonable cauſes, as we ſee they have done in all times and countries; and God, no doubt, approveth what the realm determineth in this point; for otherwiſe nothing could be certain, for that of theſe changes doth depend all that hath ſucceeded ſithence.—In like manner is it evident, that as the common-wealth hath this authority to chuſe and change her government, ſo hath ſhe alſo to limit the ſame with what laws and conditions ſhe pleaſeth, whereof enſueth the great diverſity of authority and power, which each one of the former government hath.

" So as when men talk of a natural prince, or natural ſucceſſors, (as many times I have heard the word uſed) if it be underſtood of one, that is born within the ſame realm, or country, and ſo of our own natural blood, it hath ſome ſenſe, though he may be both good or bad

The true ſenſe of a *natural* prince.

bad (and none hath been worſe, or more cruel, many times, than home born princes): but if it be meant, as though any prince had his particular government or intereſt to ſucceed *by inſtitution of nature*, it is ridiculous, for that nature giveth it not, as hath been declared, but the particular conſtitution of every commonwealth within itſelf; and ſo much for this firſt point, which muſt be the ground to all the reſt, that I have to ſay."

* "Particular kinds of government are by the right of nations, not by the law of nature; for it depends upon the conſent of the people to ſet over themſelves a king, conſuls, or other magiſtrates."—The received opinion of the temporal ſovereignty of the court of Rome is, that it is a moſt abſolute monarchy. And the characteriſtic ſpirit of the late ſociety of jeſuits was always ſuppoſed to be their abſolute and even blind obedience to their ſuperiors. Unleſs therefore, the glare of truth had been overpowering indeed, Bellarmine, who was admitted by all perſons to have been a very learned man, and by his enemies was accuſed of being a very artful, intriguing, and ambitious man, as a jeſuit would not have broached doctrines, that would have counteracted the credit and eſta-

Bellarmine's opinion forced from the glare of truth.

* Bellarmine de Laicis, l. 3. c. 6.

bliſhment

bliſhment of his own order in different kingdoms; or as a cardinal, under the poſſibility, or even expectancy of the tiara, would not have armed ſubjects with ſuch powerful weapons of freedom, ſelf-defence, and reſiſtance againſt abſolute monarchy. The application of theſe general and fundamental principles of government to the Engliſh conſtitution my plan will lead me hereafter to conſider.

The advantages of civil government.

* "Civil government (as I have before obſerved) is an inſtitution of human prudence for guarding our perſons, our property, and our name, againſt invaſion; and for ſecuring to the members of a community that liberty, to which all have an equal right, as far as they do not by any overt act, uſe it to injure the liberty of others. Civil laws are regulations agreed upon by the community for gaining theſe ends; and civil magiſtrates are officers appointed by the community for executing theſe laws. Obedience, therefore, to the laws and to magiſtrates, is a neceſſary expreſſion of our regard to the community. Without it a community muſt fall into a ſtate of anarchy, that will deſtroy thoſe rights, and ſubvert that liberty, which it is the end of government to protect."

* Dr. Price's Diſcourſe, delivered on the 4th Nov. 1789, p. 20, 21.

Intended

The intended abuſe of true principles may have produced the oppoſite effect.

Intended malice ſometimes confers an unintended benefit. So the malicious application of the general principles of government by ſome modern authors, may, by bringing on a thorough and impartial inveſtigation of them, have removed the probability of their abuſe being in future productive of any ſerious miſchief to the ſtate. Truth courts inveſtigation, and lives by diſcuſſion. Upon this principle Dr. Price is very emphatic in recommending free diſcuſſion. * "In ſhort, we may, in this inſtance, learn our duty from the conduct of the oppreſſors of the world. They know, that light is hoſtile to them, and therefore they labour to keep men in the dark. Remove the darkneſs, in which they invelope the world, and their uſurpations will be expoſed, their power will be ſubverted, and the world emancipated." Every one will not perhaps agree with Dr. Price, that the whole world is enſlaved, and that it therefore wants emancipation; yet no one certainly can differ from him in maintaining, that the cauſe of truth will be better ſupported and maintained by the publication, than the ſuppreſſion of its principles. This motive encourages me in my progreſs.

Truth better ſupported by publiſhing than ſuppreſſing its principles.

The ſubſtantial ground of difference be-

* Dr. Price's Diſcourſe, delivered on the 4th Nov. 1789, p. 14, 15.

tween

tween the diſſenting parties, appears to me to ariſe in great meaſure from the generality of the propoſitions, about which they differ. * " In a ſubject, where truth and error lie ſo near to each other, divided by a line in many caſes not to be diſcerned without care and attention, and where preingagements of intereſt to one ſide or the other are apt to bend and corrupt the judgment, it is no wonder to find great perplexity in men's notions and diſputes, or that thoſe, who lie in wait to deceive or embroil mankind, ſhould chooſe a field of controverſy, in which there is ſuch room for all the arts of ſophiſtry. While they keep in generalities, (as ſuch diſputants always do) ſome truth will be in their aſſertions, for the ſake of which they cannot abſolutely be denied. To this they retreat for cover whenever they are preſſed. By a little aggravation of the concluſions they oppoſe, they can eaſily repreſent them as exceſſes, with popular topics for declamation and invective. While the minds of men are thus amuſed with generalities, and by artificial terrors of one extreme driven towards the other, the real point of truth is eaſily kept out of ſight, and the diſpute between liberty and authority

The danger of arguing upon extreme propoſitions.

* Dr. Roger's Vindication of the Civil Eſtabliſhment of Religion, printed in 1728, p. 2 and 3.

may on theſe terms be carried on for ever; but if we can fix the proper limits of each, we ſhall ſoon make them friends, and put an end to all confuſion about them."

It is much to be lamented, that moſt of the writers upon theſe political ſubjects have ſet out, and continued through their whole career, upon the treacherous *extremities* of their reſpective doctrines. Under this exceſſive tenſion, the different partizans view their antagoniſts in the loweſt degree of depravity, and repreſent them in the groſſeſt terms of degradation. Thus this political maxim, *ſalus populi ſuprema lex*, "the welfare of the people is the firſt of all laws," is oppoſed by one party to another maxim, *omnis poteſtas a Deo*, "all power is from God;" and the abettors of each, from miſconceiving or miſapplying them, run into the oppoſite extremes, of attributing to individuals a *jure divino* indefeaſible right to power, and of denying the exiſtence of any monarchical right or power upon earth. Whereas if theſe two principles are but fairly repreſented, and rightly underſtood, they are not only conſiſtent with each other, but one eſſentially flows from the other; for as I have before obſerved, ſociety is eſſential to the phyſical nature of man; and power and govern-

How certain propoſitions commonly ſuppoſed contradictory are reconcileable.

ment are eſſential to the ſubſiſtence of ſociety: theſe, therefore, like our exiſtence, proceed immediately from God. In this generical and original ſenſe of power, no one, I apprehend, will deny that the exiſtence of all temporal or civil power proceeds from God; and in this ſenſe I may cite the authority of the Apoſtle; *There is no power, but of God*, and avail myſelf of the deduction, which Milton and others draw from it, *that the inſtitution of magiſtracy is jure divino.* But as our benevolent Creator has conſtituted us free agents in this world, ſo *what particular form of government each nation ſhould live under, and what perſons ſhould be entruſted with the magiſtracy, without doubt, was left to the choice of each nation.* But ſtill each particular form of government, adopted by different ſocieties or nations, muſt all tend ultimately to one and the ſame end.

* " The great end of men's entering into ſociety being the enjoyment of their properties in peace and ſafety, and the great inſtrument and means of that being the laws eſtabliſhed in that ſociety, the firſt and fundamental poſitive law of all commonwealths is the eſtabliſhing of the legiſlative power; as

* Locke of Civil Government, c. xi. p. 204.

the firſt and fundamental natural law, which is to govern even the legiſlative itſelf, is the preſervation of the ſociety, and (as far as will conſiſt with the public good) of every perſon in it. This legiſlative is not only the ſupreme power of the commonwealth, but ſacred and unalterable in the hands where the community have once placed it; nor can any edict of any body elſe, in what form ſoever conceived, or by what power ſoever backed, have the force and obligation of a law, which has not its ſanction from that legiſlative, which the public has choſen and appointed. For without this, the law could not have that, which is abſolutely neceſſary to its being a law, conſent of the ſociety, over whom nobody can have a power to make laws, but by their own conſent, and by authority received from them; and therefore all the obedience, which by the moſt ſolemn ties, any one can be obliged to pay, ultimately terminates in this ſupreme power and is directed by thoſe laws, which it enacts; nor can any oaths to any foreign power whatſoever, or any domeſtic ſubordinate power diſcharge any member of the ſociety from his obedience to the legiſlative, acting purſuant to their truſt, nor oblige him to any obedience contrary to the laws ſo enacted, or farther than they do allow; it being ridiculous

Sovereignty of power neceſſary for the preſervation of the ſociety.

ridiculous to imagine one can be tied ultimately to obey any power in the ſociety, which is not the ſupreme."

Inattention to what is the ſupreme power uſual cauſe of rebellion.

Inattention to what, in fact, conſtitutes the ſupreme power in the ſociety, has been the fatal cauſe of all rebellions, that have ever been raiſed againſt lawful governments. The cry of the *rights of the people* is the hackneyed warhoop, by which both ancient and modern traitors have excited and fomented diſturbances in all ſtates. * "A term (the people) which they are far from accurately defining, but by which, from many circumſtances, 'tis plain enough they mean their own faction, if they ſhould grow by early arming, by treachery or violence, into the prevailing force." The rights of the people are the moſt ſacred rights, that can be claimed, and ought to be the moſt religiouſly preſerved; but they are alſo liable to the moſt ſerious and alarming abuſes, *corruptio optimi peſſima.* Our own hiſtory fatally ſuperabounds with tragical abuſes of theſe moſt precious rights; and the frequent abuſes of them have forced from one of the greateſt ornaments of the age, an opinion, perhaps more loyal in its tendency, than

* Appeal from the New to the Old Whigs, p. 56, 57.

Inſtance of true principles being miſapprehended.

tenable upon principle. * "These doctrines concerning the people tend, in my opinion, to the utter ſubverſion, not only of all government, in all modes, and to all ſtable ſecurities to rational freedom, but to all the rules and principles of morality itſelf." The firſt of theſe doctrines, upon which this opinion is hazarded, reſts on this poſition: † "That the ſovereignty, whether exerciſed by one or many, did not only originate from the people, but that in the people the ſame ſovereignty conſtantly and unalienably reſides." Though this doctrine has been ſometimes abuſed to the groſſeſt purpoſes, yet it certainly forms the firſt, and conſequently the true, principle of political and civil government, which the high authorities I have adduced, and the reaſoning I have formed upon them, have, I truſt, ſatisfactorily eſtabliſhed.

In matters of ſuch immenſe importance, I do not hold myſelf warrantable in paſſing lightly from one ſubject to another, without ſubmitting to my readers what my judgment ſuggeſts to me as concluſive upon the whole. It requires, in fact, a greater degree of power, or ſovereignty, to change, alter, and new-

Greater degree of power to alter an old than to form a new government.

* Appeal from the New to the Old Whigs, p. 57.
† Ibidem, p. 56.

model

model an old government, than to ſettle and eſtabliſh a new one; for in the change and alteration of every old government, it becomes neceſſary to exchange, curtail, or annihilate many privileges, advantages, and rights, which had been poſſeſſed, enjoyed, and exerciſed by individuals, as well as to imagine, conſtitute, and diſpoſe of new privileges, advantages, and rights, which alone is the caſe in the formation of every new political eſtabliſhment. When, therefore, it is ſaid, that ſociety and government are of nature, it is meant, that God has ſo formed and conſtituted men, that they cannot phyſically exiſt without ſociety, nor ſociety continue to ſubſiſt without government; and, therefore, neceſſarily, ſociety and government muſt be of equal duration with human nature itſelf. And when it is aſſerted, that particular forms of government are by the right of nations, *ſingulæ ſpecies regiminis ſunt de jure gentium*, it is not meant nor ſuppoſed, that we are annexing to ſocieties a mere theoretical quality, which can never be reduced to action, nor even that we are giving to ſocieties a power, which, by its actual execution, like the charge of a muſquet, goes off in an exploſion, and evaporates into a nonentity; but we are attributing to a community or voluntary collection of free

agents, that fundamental principle and eſſential quality, without which they muſt neceſſarily loſe the attributes of ſocialneſs and freedom, and to whom the continuance of the right to exerciſe the power is as neceſſary to preſerve them *ſocial and free*, as was the firſt inveſtiture of the power to make them ſo. * "*Cujus eſt inſtituere, ejus eſt abrogare.* We ſay in general, he that inſtitutes may alſo abrogate, moſt eſpecially when the inſtitution is not only by, but for himſelf. If the multitude, therefore, do inſtitute, the multitude may abrogate; and they themſelves, or thoſe, who ſucceed in the ſame right, can only be fit judges of the performance of the ends of the inſtitution."

† "And this might be proved alſo by infinite other examples, both of times paſt and preſent, and in all nations and countries, both Chriſtian and otherwiſe, which have not had only different faſhions of governments the one from the other, but even among themſelves, at one time, one form of government, and another at other times.

Examples of the community's changing the government.

"England alſo was firſt a monarchy under Britons; and then a province under the Romans;

* Algernoon Sydney's Diſcourſes concerning Government, p. 15.

† Dolman's Conference touching Succeſſion, p. 8, 9.

mans; and after that divided into ſeven kingdoms at once, under the Saxons; and now a monarchy again under the Engliſh; and all this by God's permiſſion and approbation, who in token thereof ſuffered his own peculiar people alſo of Iſrael to be under divers manners of governments in divers times; as firſt, under patriarchs, Abraham, Iſaac, and Jacob; then under captains, as Moſes, Joſhua, and the like; then under judges, as *Othoniel*, *Aiod*, and *Gideon*; then under high prieſts, as Hely and Samuel; then under kings, as Saul, David, and the reſt; and then under captains and high prieſts again, as Zorobabel, Judas Machabæus, and his brethren, until the government was laſtly taken from them, and they brought under the power of the Romans, and foreign kings appointed by them. So as of all this there can be no doubt, but that the commonwealth hath power to chuſe their own faſhion of government, as alſo to change the ſame upon reaſonable cauſes, as we ſee they have done in all times and countries; and God no doubt approveth what the realm determineth in this point; for otherwiſe nothing could be certain, for that of theſe changes doth depend all that hath ſucceeded ſithence. In like manner is it evident, that as the commonwealth hath this au-

thority to chuſe and change her government, ſo hath ſhe alſo to limit the ſame with what laws and conditions ſhe pleaſeth; whereof enſueth the great diverſity of authority and power, which each one of the former governments hath."

In the ſupreme power of the legiſlature conſiſts the preſervation of the community.

It is to this ſovereignty or ſupreme power of legiſlating, that is, of making and eſtabliſhing, and of altering, changing, and new-modelling the government, which conſtantly and unalienably reſides in the people, or in the community, that Mr. Locke attributes the ſecurity and actual preſervation of all our civil and political rights and liberties. * "Though the legiſlative, whether placed in one or more, whether it be always in being, or only by intervals, though it be the ſupreme power in every commonwealth, yet it is not, nor can poſſibly be, abſolutely arbitrary over the lives and fortunes of the people. For it being but the joint power of every member of the ſociety given up to that perſon or aſſembly, which is legiſlator, it can be no more, than thoſe perſons had in a ſtate of nature, before they entered into ſociety, and gave up to the community. For nobody can transfer to another more power,

* Locke of Civil Government, p. 205.

than

than he has in himſelf; and nobody has an abſolute arbitrary power over himſelf, or over any other, to deſtroy his own life, or take away the life or property of another. A man, as has been proved, cannot ſubject himſelf to the arbitrary power of another; and having, in the ſtate of nature, no arbitrary power over the life, liberty, or poſſeſſion of another, but only ſo much as the law of nature gave him, for the preſervation of himſelf and the reſt of mankind, this is all he doth or can give up to the commonwealth, and by it to the legiſlative power; ſo that the legiſlative can have no more than this. Their power, in the utmoſt bounds of it, is limited to the public good of the ſociety; it is a power that hath no other end but preſervation, and therefore can never have a right to deſtroy, enſlave, or deſignedly to impoveriſh the ſubjects. The obligations of the law of nature ceaſe not in ſociety, but only in many caſes are drawn cloſer, and have, by human laws, known penalties annexed to them, to enforce their obſervation. Thus the law of nature ſtands as an eternal rule to all men, legiſlators as well as others. The rules, that they make for other men's actions muſt, as well as their own and other men's actions, be conformable to the law of nature, *i. e.* to the

will

will of God, of which that is a declaration; and the fundamental law of nature being the preſervation of mankind, no human ſanction can be good or valid againſt it."

I am fearful of fatiguing my readers with quotations: I have before given a reaſon for citing them, and I feel an encreaſing anxiety to avoid the imputation of withholding the light from the ſubject under conſideration. I neither forget nor ſlight the exhortation of Dr. Price: *Enlighten them and you will elevate them.*

The firſt principles of government uncontrovertible.

* "Though the ſchoolmen were corrupt, they were neither ſtupid nor unlearned; they could not but ſee that, which all men ſaw, nor lay more approved foundations, than that man is naturally free; that he cannot juſtly be deprived of that liberty without cauſe; and that he doth not reſign it, or any part of it, unleſs it be in conſideration of a greater good, which he propoſes to himſelf." So uncontrovertible and true did the principles, which I have laid down upon this ſubject, appear to the ſame author, that, ſpeaking in the very next page, of Sir Robert Filmer, his great tory antagoniſt, he ſays, "This,

* Algernoon Sydney's Diſcourſes concerning Government, ſec. ii. p. 5.

which

which hath its root in common ſenſe, not being to be overthrown by reaſon, he ſpares his pains of ſeeking any; but thinks it enough to render his doctrine plauſible to his own party, by joining the jeſuits to Geneva, and coupling Buchannan to Doleman, as both maintaining the ſame doctrine; though he might as well have joined the puritans with the Turks, becauſe they all think that one and one makes two."—I have now endeavoured to ſhew clearly, that ſociety and government were conſtituted by God: but that the particular form of each government was left by him to the free option of the community, which was to be ruled by it. * "Upon the ſame grounds we may conclude, that no privilege is peculiarly annexed to any form of government; but that all magiſtrates are equally the miniſters of God, who perform the work for which they were inſtituted." And, "This ſhews the work of all magiſtrates to be always and every where the ſame, even the doing of juſtice, and procuring the welfare of thoſe, that created them. This we learn from common ſenſe: *Plato*, *Ariſtotle*, *Cicero*, and the beſt human authors, lay it as an immoveable foundation, upon which they

All lawful magiſtrates the miniſters of God.

* Algernoon Sydney's Diſcourſes concerning Government, p. 55.

build

build their arguments relating to matters of that nature; and the apoſtle, from better authority, declares, *That rulers are not a terror to good works, but to evil: wilt thou then not be afraid of the power? do that which is good, and thou ſhall have praiſe of the ſame; for he is the miniſter of God unto thee for good; but if thou do that, which is evil be afraid, for he beareth not the ſword in vain; for he is the miniſter of God, a revenger to execute wrath upon him that doeth evil.* And the reaſon he gives *for praying for kings, and all that are in authority, is, that we may live a quiet and peaceable life, in all godlineſs and honeſty.*"

I have hitherto conſidered only the right, which each community eſſentially retains of forming and modelling the government, to which it chuſes to ſubject itſelf. I will now proceed to examine more minutely, upon what this right is founded.

* "Becauſe no one of them is obliged to enter into the ſociety, that the reſt may conſtitute, he cannot enjoy the benefit of that ſociety, unleſs he enter into it. He may be gone, and ſet up for himſelf, or ſet up another with ſuch, as will agree with him; but if he enter into the ſociety, he is obliged by

* Algernoon Sydney's Diſcourſe concerning Government, p. 80, 81.

the

the laws of it; and if one of thoſe laws be, that all things ſhould be determined by the plurality of voices, his aſſent is afterwards comprehended in all the reſolutions of that plurality. In the like manner, when a number of men met together to build Rome, any man who had diſliked the deſign, might juſtly have refuſed to join in it; but when he had entered into the ſociety, he could not by his vote invalidate the acts of the whole, nor deſtroy the rights of *Romulus*, *Numa*, and the others, who by the ſenate and people were made kings; nor thoſe of the other magiſtrates, who, after their expulſion, were legally created.

Remaining a member of ſociety induces an obligation of ſubmitting to its laws.

"This is as much, as is required to eſtabliſh the natural liberty of mankind in its utmoſt extent; for till the commonwealth be eſtabliſhed, no multitude can be ſeditious, becauſe they are not ſubject to any human law; and ſedition implies an unjuſt and diſorderly oppoſition of that power, which is legally eſtabliſhed; which cannot be when there is none, nor by him who is not a member of the ſociety, that makes it; and when it is made, ſuch as entered into it are obliged to the laws of it."

Of the original compact of ſociety.

The true and real baſis then of the civil or political power or ſovereignty, which exiſts

iſts in each ſtate, is the original agreement, compact, or contract of the ſociety or community, which forms that ſtate, to depute and delegate the rights, which were in them individually in the ſtate of nature, to thoſe, whoſe duty it ſhould become, to rule, protect, and preſerve the community. For in this conſiſts the whole duty both of the ſupreme and ſubordinate magiſtracy. It would be nugatory to queſtion the reality of this original contract,* becauſe the particular time and place, when and where it was entered into, cannot be named, nor the written charter or document, in which it is expreſſed, be produced for the ſatisfaction and benefit of all future generations. † "The chief queſtion is not, whether there was ever ſuch a contract formally and actually made; but whether mankind had not a right to make it: for if they had, civil government, in the ordinary courſe of things, could be rightfully founded upon nothing elſe, but this, or what is equivalent to it, *a tacit conſent of the governed.* And ſince the latter muſt be of the ſame effect with *the other*, this may be ſufficient for our preſent purpoſe, unleſs perſons

* Vid Hoadley's Defence of Hooker's Judgment, p. 158. & ſeq.

† Idem. p. 168.

think

think fit to call alſo for the *original draught* of a *tacit conſent*." The actual aſſemblage of the multitude forming themſelves into a particular ſociety, was the formal ratification of this original contract, though it were done by tacit conſent; and by this each individual of our anceſtors became bounden to the power of the whole community, or, in other words, to the ſovereignty of the ſtate. The free continuance of each of their ſucceſſors in the community is the bond, by which they become more ſolemnly and firmly obligated to the contract, by grounding their tacit conſent upon the valuable conſiderations and daily encreaſing advantages, of the experience and improvements of their predeceſſors. This is a multiplying principle, that acquires vigour from every incident of human life; as each revolving day brings with it freſh reaſons and motives, why the living members of the community ſhould ratify and confirm the original contract entered into by their deceaſed anceſtors. The perpetuation therefore of the community, is the unceaſing renovation and confirmation of the original contract, in which it was founded.

Futility of ſome modern doctrines.

The thorough conſideration, and proper application of this principle, will demonſtrate the folly and falſity of ſome newly broached

doctrines, which modern ſophiſts pretend to eſtabliſh as the neceſſary conſequences of the true principles of government, which are denied by none.

* " There never did, there never will, and there never can exiſt a parliament, or any deſcription of men, or any generation of men, in any country, poſſeſſed of the right or the power of binding and controuling poſterity to the end of time, or of commanding for ever how the world ſhall be governed, or who ſhall govern it; and therefore all ſuch clauſes, acts, or declarations, by which the makers of them attempt to do, what they have neither the right nor the power to do, nor the power to execute, are in themſelves null and void.

" When man ceaſes to be, his power and his wants ceaſe with him; and having no longer any participation in the concerns of this world, he has no longer any authority in directing, who ſhall be its governors, or how its government ſhall be organized, or how adminiſtered.

" Thoſe, who have quitted the world, and thoſe, who are not yet arrived at it, are as remote from each other, as the utmoſt ſtretch of mortal imagination can conceive; what

* Payne's Rights of Man, p. 9, 10, 11.

poſſible

poſſible obligation, then, can exiſt between them, what rule or principle can be laid down, that two nonentities, the one out of exiſtence, and the other not in, and who never can meet in this world, that the one ſhould controul the other to the end of time."

Who does not ſee, at the very firſt view of ſuch doctrines, that, in order to give them effect, a new legiſlation muſt be provided for the birth of each individual, if the former legiſlation ceaſes by the deaths of the legiſlating individuals, who framed it? For if we conſider the real phyſical ſtate of mankind, we ſhall find that the ſame hour, which terminates the exiſtence of one, gives birth to another individual; there conſequently cannot be one given inſtant of time, in which government can be ſaid to ceaſe by the demiſe of one, and revive by the birth of another. I ſhall hereafter have occaſion to go more deeply into this doctrine, by conſidering the effects, which the laws, enacted many hundred years ago by our anceſtors, ſtill continue to produce upon their poſterity to this day.

In attempting to eſtabliſh the full force and energy of the power and authority of magiſtrates in the ſtate of ſociety, I by no means derogate thereby from the perfection of true

liberty in the individuals of the community, who are ſubject to ſuch power or authority. For far be it from me to deny to any man the full, free, and uncontrouled power of thinking and acting for himſelf, in every thing, which affects not the rights of the community; for ſuch rights only does the community poſſeſs, as the individual no longer retains; the transfer of them from the one, has veſted them in the other; they cannot ſubſiſt in both. Thus the rights of each community are relative only, and bind ſuch, as by living under her protection, and remaining members of her ſociety, continue ſubject to the power, which they have ſo delegated to her; and which, whilſt the community ſubſiſts, they can neither totally nor partially recall. The liberty or right of locomotion never was transferred from the individual; and therefore the ſtate cannot, without ſome ſpecial reaſon, prevent the emigration of her members. Every man is at liberty to withdraw himſelf from any particular ſociety; but he is not free to diſturb, overturn, or deſtroy the government of that ſociety, of which he is a member. For the ſubjection of each individual of the community to the ſovereignty or political power of the whole, is that eſſential quality, which diſtinguiſhes the ſtate

The rights of each community are relative.

ſtate of civil ſociety from the ſtate of pure nature and primeval equality, which muſt ever neceſſarily produce anarchy and confuſion; for the prevention of which, and for attaining the happineſs of the people, the community inſtitutes a government, and entruſts their ſovereign power with governors.

Magiſtrates are truſtees of the community.

If any thing can give force, vigour, and energy to the power of magiſtrates over the members of a community, it is, becauſe the community itſelf has veſted it in truſt in ſome of its own body. Therefore, * "there is undoubtedly a particular deferen c and homage due to civil magiſtrates, on account of their ſtations and offices; nor can that man be either truly wiſe or truly virtuous, who deſpiſes governments, and wantonly *ſpeaks* evil *of his rulers*, or who does not, by all the means in his power, endeavour to ſtrengthen their hands, and to give weight to their exertions in the diſcharge of their duty. *Fear God*, ſays St. Peter. *Love the brotherhood. Honour all men. Honour the king.* You muſt needs, ſays St. Paul, *be ſubject to rulers, not only for wrath* (that is, from the fear of ſuffering the penalties annexed to the breach of the laws), *but for conſcience ſake. For rulers*

* Dr. Price's Diſcourſe on the 4th Nov. 1789, p. 27.

This delegated power adequate to all the purpoſes of the moſt efficient government.

are miniſters of God, and revengers for executing wrath on all that do evil." In a word, without troubling my readers with any more authorities for eſtabliſhing theſe clear poſitions, that the power, both of the ſupreme and ſubordinate magiſtrates, is delegated to them by the people, is holden by them in truſt for the people, and can only be exerciſed by them, according to the nature, conditions, and extent of the truſt, I ſhall conclude this ſubject by ſhewing, from two of the ſtrongeſt aſſertors of civil liberty, that upon theſe principles the power of the ſupreme magiſtrate is ſo conſtituted in a kingdom, that it becomes fully adequate to all the purpoſes of the moſt efficient monarchy. * " In the 8th Book, p. 444, he gives it as his judgment, that all kings, but ſuch as are immediately named by God himſelf, have their power by *human right* only; though after human compoſition and agreement, their lawful choice is approved of God, and obedience required to them, by *divine right*." What more than this can be required by the ſtauncheſt devotee to kingly power? The right of the ſovereign to command, is one and the ſame thing, as the obligation of the ſubject to obey; beyond the

* Hoadley's Defence of Mr. Hooker's Judgment.

eſtabliſh-

eſtabliſhment of theſe two points, I do not conceive how, in a political ſociety, the ſubſtance of ſovereignty can be extended; for I will not ſuppoſe even one of my readers to entertain a ſerious idea of a pure regal or arbitrary government on the one hand, or of an abſolutely equalized anarchy on the other. There is always much delicacy, and often much danger, in arguing upon the extremes of any propoſition.

To riſe up againſt the legiſlature, the greateſt of all civil crimes.

* "From the foregoing reaſoning then the concluſion is evident; that if any one or any number of individuals, ſet up his or their wills in oppoſition to the will of the legiſlator, he or they are guilty of the greateſt of all crimes they can poſſibly commit; becauſe it is a crime, which diſſolves, at once, the whole cement of ſociety, and ſnaps aſunder by violence all the bonds of government, which tend to ſecure the whole peace and tranquillity; for oppoſition to the will of the legiſlator tends to drive them back to that miſerable ſtate of nature, from which they gladly fled to government, as to a refuge and an aſylum."

The right order of reaſoning would here

* Cooper's firſt Principles of Civil and Eccleſiaſtical Government, p. 78.

direct me to inveſtigate and diſcuſs the variety and nature of different political eſtabliſhments, by which communities have carried into execution their inherent rights of modelling their own forms of government. But my intention is not to lay before the public a full and elaborate eſſay upon government, but to ſubmit to the conſideration and judgment of my countrymen, ſuch principles, grounds, and reaſons, as will evince the political neceſſity of ſubmitting to, and ſupporting our preſent conſtitutional eſtabliſhment, and of counteracting the wiſhes, efforts, and attempts of our ſecret and open enemies to diſcredit, weaken, and ſubvert it.

I have before ſaid, and I again repeat, that our conſtitution is founded upon the *Rights of Man.* I have attempted to trace their nature and origin, as well as our right to exerciſe them; it remains for me to conſider, how we are affected by the actual execution or exerciſe of theſe rights in our own community, which brings me to the conſideration of the conſtitution and government of Great Britain.

CHAP.

CHAP. III.

OF THE GENERAL CONSTITUTION AND GOVERNMENT OF GREAT BRITAIN.

Our conſtitution founded upon principle.

AFTER the adoption of the principles, which I have already endeavoured to eſtabliſh, it would evidently exceed the intent and purport of this publication, to enter into hiſtorical reſearches, in order to trace the antiquity, and delineate the gradual and progreſſive improvements of our conſtitution; for it is not to be ſuppoſed, that the community of this iſland paſſed, *uno ſaltu*, from their firſt agreement to enter into ſociety, immediately into a conſtitution and government of that perfection, which diſtinguiſhes the conſtitution and government, that we now happily enjoy. Could we even clear the dark pages of thoſe remote hiſtories from doubt and uncertainty, the information might gratify the curioſity of the mind, but would bring no conviction to the underſtanding. *Principle* alone is the true compaſs, by which we can ſteer ſteadily and ſafely through the treacherous perils of this ſea of politics.

If any of my countrymen have been deluded, by theſe modern pſeudo-evangeliſts, into their practical leſſons, * " to conſider the world as new to them, as to the firſt man, that exiſted, and their natural rights in it of the ſame kind; † that there is no political Adam, who has a power or right to bind all poſterity for ever; ‡ that the rights of the living cannot be willed away, and controuled, and contracted for by the manuſcript aſſumed authority of the dead, there being no authority in the dead over the freedom and rights of the living; and that, therefore, ‖ we are not to refer to muſty records and mouldy parchments for the rights of the living; and conſequently, § that they are in error, who reaſon by precedent drawn from antiquity reſpecting the Rights of Man," I ſhall certainly make little impreſſion upon them by the quotation of any written, hiſtorical, philoſophical, or even legiſlative authority whatever. I muſt, however, in juſtice, remind theſe docile diſciples of modern liberty of the lenient palliative, which their demagogue has thrown into his inſtructions, leſt they may ſwallow the envenomed

* Payne's Rights of Man, p. 46. † p. 13.
‡ p. 10. ‖ p. 15. § p. 44.

draught too haſtily, without the application of the corrective ſolvent. * "It requires but a very ſmall glance of thought to perceive, that although laws made in one generation often continue in force through ſucceeding generations, yet that they continue to derive their force from the conſent of the living. A law not repealed continues in force, not becauſe it cannot be repealed, but becauſe it is not repealed, and the non-repealing paſſes for conſent." Theſe written authorities, or, in the faſhionable phraſe, *theſe aſſumed uſurpations of the dead over the living*, may be referred to by thoſe, who will derive from them the ſatisfaction of example, illuſtration, and reaſon.

What gives binding effect to laws.

In order to humour theſe neophites to modern liberty, I ſhall follow and argue upon their own avowed principles and doctrines; and I certainly ſo far go with them, that I do not admit, that the truth of any principle can be proved merely from its antiquity, or that every right can be eſtabliſhed merely by its length of poſſeſſion. † "For as time can make nothing lawful or juſt, that is not ſo of itſelf (though men are unwilling to change

The truth of principles not to be proved from its antiquity.

* Payne's Rights of Man, p. 13.

† Algernoon Sydney's Diſcourſes concerning Government, 380.

that

that, which has pleaſed their anceſtors, unleſs they diſcover great inconveniences in it) that, which a people does rightly eſtabliſh for their own good, is of as much force the firſt day, as continuance can ever give to it; and, therefore, in matters of the greateſt importance, wiſe and good men do not ſo much enquire, what has been, as what is good, and ought to be; for that, which of itſelf is evil, by continuance is made worſe, and upon the firſt opportunity is juſtly to be aboliſhed." Without, therefore, attempting to trace the origin, progreſs, and eſtabliſhment of our conſtitution and government, through the intricate mazes of hiſtorical darkneſs, confuſion, and uncertainty, I ſhall keep conſtantly in view the principles of civil liberty, which I have already laid down, and thereby endeavour to eſtabliſh, in application to them, the force and energy of our preſent form of conſtitution and government.

The firſt delegation of power in this iſland by election.

It is becauſe *the ſovereignty of civil or political power originates from the people, and conſtantly and unalienably reſides in the people*, that we find, from the earlieſt credible accounts of our anceſtors, that the political community of this iſland firſt delegated their power to an individual, by the actual election of the repreſentative body or common council of the nation:

nation: * *Summa imperii bellique adminiſtrandi communi concilio permiſſa eſt Caſſivellano.* Upon this principle, and in exerciſe of the indefeaſable right and power, upon which it is grounded, did our anceſtors continue this form of elective monarchy, till they became a province under the Romans; the diſſolution then of that government was effected, as Mr. Locke expreſſes, † "by the inroad of a foreign force making a conqueſt upon them. For in that caſe, not being able to maintain and ſupport themſelves as one entire and independent body, the union belonging to that body, which conſiſted therein, muſt neceſſarily ceaſe." ‡ In execution of the ſame

The government diſſolved by force of arms.

* Cæſar's Commentaries.

† Locke of Civil Government, c. xix. p. 227.

‡ No free exerciſe of a people's right can be ſuppoſed to exiſt under the compulſive controul of a foreign enemy. Thus Mr. Locke (ibid, p. 217), "Though governments can originally have no other riſe, than that before mentioned, nor polities be founded on any thing, but the conſent of the people; yet ſuch have been the diſorders ambition has filled the world with, that, in the noiſe of war, which makes ſo great a part of the hiſtory of mankind, this conſent is little taken notice of; and therefore many have miſtaken the force of arms for conſent of the people, and reckon conqueſt as one of the originals of government. But conqueſt is as far from ſetting up any government, as demoliſhing a houſe is from building a new one in the place; indeed, it often makes way for a new frame of commonwealth, by deſtroying

ſame rights and power, when they were left to themſelves by their Roman conquerors, did they divide themſelves into an heptarchy, or ſeven diſtinct kingdoms, under the Saxons; and when they had experienced the inconveniences of theſe divergent ſovereignties, they reconcentered the ſupremacy in one monarch, as it has ever ſince continued. In this ſame ſpirit, and in the exerciſe of theſe ſame rights, did the Saxon conquerors of our Britiſh anceſtors, * "when they had ſubdued the Britons, chuſe to themſelves kings, and required an oath of them to ſubmit to the judgment of the law, as much as any of their ſubjects." So when the Saxons, as maſters of the vanquiſhed Britons, began to look upon themſelves as the political community of this iſland, they † "eſtabliſhed a form of adminiſtration, which limited the prince, and required that public affairs ſhould be ſettled by aſſemblies of the chief men of the nation. The privileges of the people were afterwards enlarged by the alterations, which the wiſe and virtuous Alfred introduced; and this confir-

Saxon Heptarchy.

Our monarchy limited in its original creation.

General view of our government.

ſtroying the former; but, without the conſent of the people, can never erect a new one."

* Mirror of Juſtice, c. i. ſect. 2.

† Dr. Kippis' Sermon, preached at the Old Jewry, on the 4th Nov. 1788, p. 14.

mation

mation of the mode of trial by juries was one of the nobleſt advantages ever conferred on human ſociety. Nor did the Norman conqueſt deſtroy our conſtitution, though it hindered its operation for a time, and gave occaſion to the exerciſe of much tyranny. On the contrary, the Engliſh laws gradually recovered their vigour, and became the baſis of the charter of Henry the Firſt; of the celebrated Magna Charta, in the reign of King John; and of other charters. How ſtrong a ſenſe Engliſhmen had of their legal right to liberty, is manifeſt from the numerous inſtances, in which they demanded, that the great charter ſhould be ſolemnly confirmed. Even the feudal policy, however defective it may be juſtly eſteemed, compared with the benefits we now enjoy, was formed on the principles of freedom, with reſpect to thoſe perſons, who were poſſeſſed of landed property. There was, likewiſe, in that ſyſtem, a ſpirit of improvement; ſo that it gradually gave way, and naturally brought in a better ſtate of things, as ſociety advanced towards perfection." In ſhort, to the exerciſe of theſe indefeaſible rights of the community is to be attributed every legal alteration or improvement of the conſtitution and government of this

this kingdom, ſince the eſtabliſhment of the Engliſh monarchy, in the perſon of king Egbert, to the preſent reign of his majeſty King George the Third; the particulars of which we ſhall proceed to conſider.

CHAP.

CHAP. IV.

OF THE CIVIL ESTABLISHMENT OF RELIGION.

Choice of our religion an indefeaſible natural right.

I Have already obſerved, that one of the natural rights, which each individual retains, even independently of the ſociety, of which he is a member, is the uninterrupted communication and intercourſe of the ſoul with its Creator; and Mr. Payne ſays, that *amongſt the natural rights, which he retains, are all the intellectual rights, or rights of the mind; conſequently religion is one of thoſe rights.*

We need not recur to ſchoolmen to underſtand or admit this univerſal maxim of religion, that our dependance upon our creator binds us indiſpenſibly to a grateful acknowledgment of our exiſtence, and a ſincere and unreſerved tender of our minds and hearts, to think and act as he ſhall require; for I conclude with all thoſe, who are neither atheiſts nor deiſts, that the light and grace, which Almighty God communicates to his creature, in conſequence of this offering, are perſonally binding upon the individual, to whom they are communicated, and conſequently cannot be controuled by other

The duty of individuals to follow the inſpirations of God.

human beings collectively or individually, who ſtand in the ſame predicament of excluſive reſponſibility to their Creator. The right, therefore, which each individual poſſeſſes of this free and uninterrupted communication and intercourſe with his Creator, is eſſentially paramount to all human, civil, or political power whatever.

* "Religion, gentlemen, appears to me to be a gift, which God beſtows on every individual, ſubject to his movements and inſpirations, but in every other reſpect entirely free, and beyond the reach of any human juriſdiction; therefore, no one ought to aſſociate againſt his will, or without ſome reaſonable cauſe or motive, with any religious ſociety whatever." And the great Fenelon, archbiſhop of Cambray, a prelate of the eſtabliſhed religion in a Roman Catholic country under an abſolute monarchy, ſpeaks the ſame language. † "Liberty of thought is an impregnable fortreſs, which no human power can force; therefore, kings ſhould not take upon themſelves to direct in matters of religion."

Liberty of thought in religious matters not ſubject to civil controul.

* Profeſſor Noodt's Diſcourſe upon Liberty of Conſcience, as tranſlated by A. Macawlay, p. 27.

† Fenelon, as quoted by Dr. Rogers, Vindication of the Civil Eſtabliſhment of Religion, p. 42.

Every

Every individual human being has not only a right, but is under an indiſpenſible obligation to adopt that religious cult or mode of worſhip, which, after due deliberation, in the ſincerity of his heart, he thinks his Creator requires of him; it follows of courſe, that a ſociety compoſed of ſuch individuals muſt, collectively taken, enjoy the ſame right, and be under the ſame duty and obligation. As, therefore, it is neither my intention nor purpoſe to examine, or even conſider the reaſons, grounds, or merits of the religious perſuaſion of any one individual, ſo ſhall I equally avoid the diſcuſſion or examination of the internal evidence of that religion, which the majority of this community has thought proper to countenance and ſupport by civil ſanctions. The civil eſtabliſhment of a religion affects in no manner the truth or falſehood of the religion itſelf. * " The magiſtrate (or ſupreme civil power) in Turkey has juſt the ſame uncontrouled civil right to eſtabliſh the religion he approves, as a Chriſtian magiſtrate has to eſtabliſh his choice: chriſtianity made no alteration in this caſe; but left civil power as it found it; and if it was before the judge,

The rights and duties of the ſociety the ſame as of individuals.

The civil eſtabliſhment of religion affects not the truth of the religion itſelf.

* Rogers's Vindication, p. 162.

what religion it ſhould eſtabliſh, it continues ſo ſtill." And the ſame learned author, who is remarkable for perſpicuity and ſtrength of argument, further ſays; * "Nothing, therefore, can be more unjuſt or impertinent, than thoſe ſuggeſtions, that upon my principles, popery will be the true religion in Spain, preſbytery in Scotland, and Mahometiſm in Turkey. Theſe are, indeed, the eſtabliſhed religions in thoſe places; but not one jot the more true for being eſtabliſhed. To the laws eſtabliſhing religion, civil obedience is due, in the ſame meaſures and under the ſame reſerves in Spain, as in England; but aſſent of judgment againſt private convictions is no part of the obligations ariſing from the eſtabliſhment in either."

Changes in ſucceſſion of the religion in this country.

Thus did our Britiſh anceſtors adopt for ſome centuries the Druidical inſtitutions; after that, they embraced the Chriſtian religion, under king Lucius, which was preached to them by St. Damianus, ſent hither from Rome for that purpoſe by St. Eleutherius; and when the Saxons conquered the iſland, a part of the community retired into the mountains of Wales, to preſerve their liberties and religion from the innovations and en-

* Rogers's Vindication, p. 208.

croachments

croachments of their new maſters. The Saxons, however, continued for many years to keep up the religious eſtabliſhment in the community, which they had brought with them out of Germany. About four hundred years after the preaching of St. Damianus, the Engliſh Saxons, who then properly were the community or political ſociety of this country, were converted to chriſtianity by St. Auguſtine and his fellow preachers, ſent alſo for this purpoſe from Rome by St. Gregory the Great. From this time then, until the reformation, the majority of this community adopted the Roman Catholic religion, and made it the eſtabliſhed religion of the country.

Chriſtianity eſtabliſhed and propagated by preaching, and the adoption of it free and voluntary.

When I ſpeak of the adoption of religion either by one or more individuals, I wiſh ever to be underſtood to ſpeak of it, as of the free act of a free agent. True it is, that our bleſſed Redeemer came upon earth to eſtabliſh the Chriſtian religion; and his injunction to mankind to ſubmit to and adopt it is mandatory and unexceptionable; but then it is equally true, that the act of ſubmiſſion to, and adoption of it, muſt neceſſarily be the free and voluntary act of the individual. It was by preaching, that our bleſſed Lord himſelf and his apoſtles and their ſucceſſors propa-

gated and eſtabliſhed the Chriſtian religion: the effects of preaching are perſuaſion and conviction; and theſe eſſentially preſuppoſe the freedom of the perſon to be perſuaded and convinced. Perſuaſion and conviction formally exclude every idea of neceſſity and compulſion.

From the firſt formation of man to the preſent hour, the following ſaying of dean Tucker was equally true: * "No human authority ought to compel man to ſurrender to any one his right of thinking and judging for himſelf in the affairs of religion, becauſe this is a perſonal thing between God and his conſcience, and he can neither be ſaved nor damned by proxy."

Original conſtitutional connection of church and ſtate.

The very earlieſt traces of our conſtitution beſpeak its interwoven texture of church with ſtate. Upon the avowed aſſumption, that religion generally promotes morality, our anceſtors wiſely determined, that a religious eſtabliſhment ſhould be ſanctioned by the community, and the legal eſtabliſhment of it ſhould form an eſſential part of the Engliſh conſtitution. Now although government, as we have before ſeen, be eſſential to

* Vid. Religious Intolerance no part of the general plan, either of the Moſaic or Chriſtian Diſpenſation, by Joſ. Tucker, D. D, Dean of Glouc. 1774.

ſociety,

ſociety, yet the particular form of government, which each particular ſociety ſhould adopt, was left to the free option of the ſociety, and neceſſarily remains open to whatever changes or improvements the ſame ſociety ſhall think proper, convenient, and neceſſary, from time to time to introduce. So although a religious eſtabliſhment be eſſential to the Engliſh conſtitution, yet the particular form of that eſtabliſhment muſt as neceſſarily remain open to the general ſenſe and option of the community, as the freedom of each individual's intercourſe and communication with his creator muſt for ever remain perfectly uncontrouled. Without entering, therefore, into any polemical controverſy or diſpute about the particular tenets, doctrines, or principles of what once was, or what now is the religion ſanctioned by the law of England, whatever my own religious opinion or belief may be, I am bound by principle to allow to my neighbour the ſame liberty and right of following the dictates of his conſcience, which I claim to myſelf: and whatever that mode of worſhip may be, in the free and conſcientious adoption of which the majority ſhall concur, the community hath the unimpeachable right of countenancing and ſupporting it by civil ſanctions, or, in other

The right of a community to give civil ſanction to whatever they concur in.

words, of making it the eſtabliſhed religion of the country; for the adoption of a particular church eſtabliſhment by the ſtate has preciſely the ſame binding obligation upon the community, as the enacting any other civil regulation or ordinance whatſoever; but * "a religious eſtabliſhment is no part of Chriſtianity, it is only the means of inculcating it."

The civil eſtabliſhment of religion in a country cannot by poſſibility operate any effect upon the nature or truth of the religion itſelf; thus the Preſbyterian religion in England, where it has no civil eſtabliſhment, is one and the ſame religion as it is in Scotland, where it is the eſtabliſhed religion of the country. The Roman Catholic religion is one and the ſame, ſince it hath ceaſed to be the eſtabliſhed religion of this country, as it was, whilſt it was ſanctioned and eſtabliſhed by the law of the land. The effects of this civil ſanction or eſtabliſhment are neceſſarily of a mere civil nature; thus are the miniſters of the eſtabliſhed religion ſupported, maintained, and dignified by the ſtate; they form a ſeparate body from the laity; are bound by

The effects of a civil eſtabliſhment merely civil.

* Paley's Moral and Political Philoſophy, 2 vol. c. x. p. 303.

ordinances,

ordinances, regulations, and canons, to which the laity are not ſubject; in many inſtances they are made corporations, and are enabled to ſue and be ſued in their corporate capacity; and are entitled to many civil immunities, rights, liberties, and privileges in the ſtate. Thus, ſays Dr. Rogers, a dignitary clergymen of the eſtabliſhed religion, * "The church, or religious ſociety eſtabliſhed remains the ſame religious ſociety it was before, ſubſiſting on the foundation it was firſt built on, with the ſame offices and adminiſtrations, the ſame ſocial rules, and the ſame terms of union between the members. The eſtabliſhment *(e. g.)* of that religious ſociety we call the Church of England, does not alter that ſociety in its nature or eſſentials, but is purely adventitious to it. It would remain the ſame Chriſtian church, if the ſtate ſhould think fit to eſtabliſh Mahometiſm. The commiſſion and office of its paſtors to all purely eccleſiaſtical effects the ſame, and the mutual duties ariſing from the relation between them and their flock the ſame. And if by the rules of Chriſtian religion, an unneceſſary departure from them be ſinful, it will continue to be ſo, whatever

The civil eſtabliſhment cauſes no alteration in the nature of the religion.

* Rogers's Vindication, p. 209.

the

the civil power may determine about it. The eſtabliſhment of any religion being purely a civil act, can have only civil effects. I have endeavoured to aſſign the proper limitations to the magiſtrate's power in matters of religion; within thoſe limitations, his laws concerning it have the ſame legal effects, and are attended with the ſame legal obligations, on himſelf and his ſubjects, that other civil laws have, within their proper extent. The general effect of an eſtabliſhment, and from which all others ariſe, is, that the laws or rules of a religion, or of a church profeſſing that religion, are thereby *incorporated*, or made a part of the laws of that civil community. All the power of legiſlation, which the magiſtrate has, is to make civil laws for that community. If he has any power to make laws with regard to religion, thoſe laws muſt be civil laws, a part of the body of the civil laws of that community. Thus the thirty nine articles, the liturgy, ordinal, diſcipline, and polity of the church of *England* are *incorporated* into, become the matter, and made a part, of the body of our laws; legal effects are annexed to its adminiſtrations, legal proviſions made for its ſupport, and certain rights and privileges

ſettled

ſettled by law on the paſtors and profeſſors of it.

" The firſt particular effect I obſerve of theſe laws is, that they give the profeſſors of that religion a legal property, in the privileges and advantages, they confer on them, and conſequently a right to be protected by law in the enjoyment of them."

The legiſlature ſubjects not the intellect to its requiſitions.

I have before ſaid, that our intellectual operations are not under the controul of the civil or political power of the ſociety. The legiſlature, therefore, never attempts to enjoin the internal mental approbation, but only the external peaceable ſubmiſſion to its requiſitions. * " It was never in my view to offer the civil authority, as a ground of aſſent in matters of religion, even thus far, much leſs as an authority, which ought to over rule our own convictions. The magiſtrate or legiſlator, as ſuch only commands, and the ſubmiſſion due to him under that character, is not aſſent of judgment, but obedience of practice, ſo far as may conſiſt with prior obligations. The nature and ends of ſociety require an obedience, either active or paſſive to his laws, whether we approve the matter of them or not; but the

* Rogers's Vindication, p. 207.

nature

nature and ends of ſociety do not acquire aſſent to his judgment: and my denying to private ſubjects a right publicly to oppoſe his laws, does not in the leaſt imply an obligation to aſſent to his judgment in the matter of them." When, therefore, the community or legiſlature paſſes a new law, the freedom of my thoughts upon the ſubject of it, is in no manner impaired nor affected by the enacting of it; but my internal or intellectual diſapprobation or diſſent, can never warrant any poſitive or external contempt of, or reſiſtance to the law. If ſuch reſiſtance were permitted, no law could acquire a binding force without the univerſal conſent of every individual member of the legiſlature. It is an univerſal maxim of legiſlation, that when a law has once been enacted by the majority of the legiſlature, it is as binding upon thoſe, who oppoſed, as upon thoſe, who conſented to the paſſing of it. When, therefore, the legiſlature enacts, that a certain religious worſhip ſhall be ſanctioned and ſupported by the ſtate, * " the concluſion aſſerted by the law is not, *This is a true religion*; *much leſs*, *this is the only true religion* (for he may believe ſeveral other ſchemes of religion

The diſſent of ſome invalidates not the act of the majority.

* Rogers's Vindication, p. 207.

equally

equally true, and yet be determined by very good reaſons to eſtabliſh that); but the concluſion of the laws is preciſely this: this is the religion *ſhall be favoured with a civil eſtabliſhment in this community*. This concluſion is a civil law of that community, ſtands upon the ſame foot, and is equally protected from the public oppoſition of private ſubjects, with any other law of the ſame importance." And when this particular religious cult or worſhip ſhall have once received the civil ſanction of the ſtate, it is certainly equally binding and coercive upon the community to ſupport it in an external civil way, as any other civil ſanction whatever. So, * "when the ſupreme authority has debated and determined a concluſion of law, a private ſubject may not, conſiſtently with the peace of the ſociety, and the common duty of ſubjection, be permitted to continue on the debate, or revive it as often as he pleaſe in a public way, *(i. e.)* print and publiſh books and arguments againſt the juſtice or expediency of the law. The intention, or at leaſt the conſequence of ſuch actions muſt be diſparaging the wiſdom or juſtice of the legiſlature, taking from them the eſteem and confidence of

Laws reſpecting the civil eſtabliſhment of religion as binding as other laws.

The paſſing of a law induces an obligation in all to ſubmit to, and not to oppoſe it.

* Rogers's Vindication, p. 224.

their

their ſubjects, diſquieting the minds of thoſe, who are ſatisfied with the law, and raiſing up parties in oppoſition to it. The laws eſtabliſhing religion ſtand, as laws, on the ſame foot with all others; and if ſuch acts of oppoſition to other laws would juſtly be eſteemed mutiny and ſedition, they will have the ſame characters, when done in oppoſition to the laws eſtabliſhing religion."

The civil effects of religion upon a community.

It is the general opinion of the moſt approved writers upon political and civil liberty, that all the lawful acts of the community muſt neceſſarily tend to the peace, welfare, and preſervation of the community; and it is alſo their general opinion, that religion tends mainly to thoſe ends. * "To ſay that religion is not a reſtraining motive, becauſe it does not always reſtrain, is equally abſurd as to ſay, that the civil laws are not a reſtraining motive. It is a falſe way of reaſoning againſt religion, to collect in a large work a long detail of the evils it has produced, if we do not give at the ſame time an enumeration of the advantages, which have flowed from it. Were I to relate all the evils, that have ariſen in the world from civil laws, from monarchy and from republican government,

* Monteſquieu's Spirit of Laws, b. xiv. x. c. ii.

I might

I might tell of frightful things. Was it of no advantage for ſubjects to have religion, it would ſtill be of ſome, if princes had it, and if they whitened with foam the only rein, which can retain thoſe, who fear not human laws. A prince, who loves and fears religion, is a lion, who ſtoops to the hand, that ſtrokes, or to the voice that appeaſes him. He who fears and hates religion, is like the ſavage beaſt, that growls and bites the chain, which prevents his flying on the paſſenger. He, who has no religion at all, is that terrible animal, who perceives his liberty only, when he tears in pieces, and when he devours. * " The general conſent of mankind in any one concluſion, though it be not, in ſtrictneſs, a proof of truth or juſtice, yet it is a fair preſumption of it. In all civilized nations, of whom we have any account paſt or preſent, we find ſome eſtabliſhed religion. Hence I take leave to conclude, that the wiſeſt men in all ages (for ſuch the founders and governors of ſocieties may equitably be preſumed) have judged it their right and duty to eſtabliſh ſome religion, and that the peace and intereſts of ſociety required, that ſome ſhould

The duty of a community to have a civil eſtabliſhment of religion.

* Rogers's Vindication of the Civil Eſtabliſhment of Religion, p. 21, and 22.

be eſtabliſhed. All the diſputes and contentions, which have happened on this ſubject, have related to the choice of the religion; but in this concluſion, that ſome ſhould be eſtabliſhed, the wiſdom of all ages and countries has concurred; and this concurrence I inſiſt on, as a full reply to all thoſe authorities of private writers, which are or can be cited, as favouring a contrary judgment. So ſaid the elegant and learned author of Principles of Penal Law*. "Religion hath been wiſely eſtabliſhed by law, as uſeful and neceſſary to ſociety; and is ſo wrought into the very frame of our government, as to become a main part of the conſtitution. The magiſtrate, therefore, though the well being of the ſtate be his peculiar object, is by no means exempted from a due concern for the religion of his country. But it is no conſequence from theſe premiſes, that men ſhould be debarred liberty of conſcience, and the free uſe of reaſon and enquiry; much leſs can any argument be drawn from them in favour of perſecution. Freedom of thought is the prerogative of human kind; a quality inherent in the very nature of a thinking being; a pri-

* By Mr. Eden, now Lord Auckland, p. 91.

vilege,

vilege, which cannot be denied to him, or taken from him."

It would far exceed the intended bounds of this publication, were I to undertake the conſideration of all the reaſons for and againſt the propriety and advantages of the civil adoption of a religious eſtabliſhment. Very ſolid and ſubtle arguments are produced by the oppoſite partizans; and it would require a very long treatiſe indeed, to digeſt the ſubſtance, analyze the reaſoning, and elucidate the concluſions of the hiſtorical, political, philoſophical, and theological writers upon this ſubject. The application of the ſimple principles, that I have already endeavoured to eſtabliſh, will perhaps, conduct the mind more clearly and immediately to the true point, than the moſt elaborate, minute, and impartial inveſtigation of all the reaſons and arguments, that have been written upon the ſubject. It muſt be allowed, that in the preſent ſituation of human affairs, many very cogent arguments may be alledged againſt the adoption of ſuch an eſtabliſhment in a new government, which do not in the leaſt weaken the neceſſity of maintaining and preſerving it, when once eſtabliſhed in an old one. As the latter caſe alone affects our conſtitution, I ſhall drop every conſideration of the former.

Many reaſons for not making a civil eſtabliſhment in a new government which do not juſtify the abolition of it in an old one.

In the Engliſh, as well as every other community, each individual member of it has the ſame right, duty, and obligation to follow the dictates of a ſincere conſcience. As long, therefore, as in this he does nothing to injure nor offend the community, ſo long ought he not in any manner to be puniſhed or chaſtiſed for differing either in doctrine or diſcipline from that religious ſociety, which has received the civil ſanction of the ſtate. " Therefore, ſays Dr. Prieſtley, in his Eſſay on the Firſt Principles of Government, * " as a being capable of immortal life (which is a thing of infinitely more conſequence to me, than all the political conſiderations of this world) I muſt endeavour to render myſelf acceptable to God, by ſuch diſpoſitions and ſuch conduct as he has required, in order to fit me for future happineſs. For this purpoſe, it is evidently requiſite, that I diligently uſe my reaſon, in order to make myſelf acquainted with the will of God; and alſo, that I have liberty to do whatever I believe he requires, provided I do not moleſt my fellow creatures by ſuch aſſumed liberty."

Man ought not to be puniſhed for ſpeculative opinion of religion.

In vain will any individual attempt to palliate or juſtify an action, that is offenſive or injurious to the community, by the plea or defence of its being directed or enjoined by

The community will not judge any action that tends to ſubvert government to be dictated by religion.

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his religion; for as it is by the particular ordination of Almighty God, that ſociety is neceſſary for man, and ſociety cannot ſubſiſt without government; and as Almighty God left the particular form of goverment to the option of each community, and has in the moſt expreſs manner enjoined and commanded the individuals of every community to ſubmit to, and obey that government, which in exerciſe of the liberty, which he had granted them, they have formed for themſelves, it is evident, that the community is fully warranted in judging, that no action, which tends to diſturb or ſubvert the end or preſervation of the government, can have been directed or enjoined by that deity, whoſe juſtice and conſiſtency are equal with all his other infinite perfections. Theſe falſe pretences or calls of conſcience to diſapprove, reſiſt, or oppoſe the religion ſanctioned or eſtabliſhed by the ſtate, are more pointedly reprobated by the learned divine, whom I have ſo often quoted. * "A pretence of conſcience for oppoſing the right of the magiſtrate (or ſupreme ſovereign power) to eſtabliſh any religion at all, cannot be ſupported by the plea of a ſpecial miſſion from

* Rogers's Vindication, p. 149, 150.

God; becauſe a doctrine ſo abſurd and deſtructive to human ſociety, reaſon cannot admit to be from God: and he, who pretends to come from God with ſuch a meſſage, brings with him ſuch an internal diſproof of his miſſion, as would overrule any outward proofs of it; and he may as well pretend a revelation, requiring him to tell us, there is no God."

Every man is preſumed to be affected towards his religion, in proportion as he thinks, and feels, that it is the pure effect of his own voluntary choice *. From hence ariſe the love and reverence, which the majority of the Engliſh nation bear to their church; and from hence alſo is redoubled the obligation upon all diſſenters from that church, to ſubmit unto, becauſe they are ſuppoſed to join and concur in all the acts of the legiſlature, by which the church receives the civil ſanction of the ſtate. Nor can their conſciences be in any manner affected by ſuch concur-

The conſciences of individuals not concerned in the truth of the religion which receives the civil eſtabliſhment.

* Mr. Burke, a profeſſed member of the national church, ſpeaks, as all other ſuch members feel about it. "Firſt, I beg leave to ſpeak of our church eſtabliſhment, which is the firſt of our prejudices; not a prejudice deſtitute of reaſon, but involving in it profound and extenſive wiſdom. I ſpeak of it firſt. It is the firſt, and laſt, and midſt in our minds." *Reflections on the Revolution in France*, p. 136.

rence, although they ſhould diſapprove of, or condemn the tenets of that church; ſince, as Dr. Rogers obſerves, *a religion becomes not one jot the more true for being eſtabliſhed.* The difference, therefore, is great between the ſubmiſſion, which, upon the principles of all civil government, we are bound to ſhew generally to the civil ſanction or eſtabliſhment, which the ſtate gives to any religious ſyſtem, and the intellectual adoption of the peculiar tenets and doctrines, which diſtinguiſh that particular ſociety from any other. The toleration, which the legiſlature grants to thoſe, who differ from the eſtabliſhed religion, is the only proof that needs be alledged, that they do not mean to force or impoſe the belief of their religious tenets upon the conſciences of any member of the ſociety. For * "what can be more juſt and equitable, than to leave every perſon at full liberty to act according to his own underſtanding, in matters which regard none but himſelf?"

Before I leave this ſubject, it will be proper to ſay ſomething upon the nature of church lands, or eccleſiaſtical property, concerning which many erroneous notions are

* Noodt's Diſcourſe on Liberty of Conſcience, p. 97, 98.

conceived and propagated, from inattention to their origin or ſource. When the ſtate eſtabliſhes a religion, it clothes or inveſts the clergy of that religion with certain political qualities; one of which is a corporate capacity, by which they are made perpetual bodies, always repreſented by ſucceſſors. By this quality of perpetuity, whatever property is once acquired by a clergyman in his corporate capacity, it is rendered unalienable for ever, and was therefore formerly expreſſed by our anceſtors, by the term *Mortmain*; which imported, that the hands, into which the property had paſſed, poſſeſſed no active power nor capacity of transferring it to others. Now the right of holding, modelling, and transferring property, is given and regulated by the ſovereign power of every ſtate; and therefore the civil power alone could enable individuals to veſt the land, which by the ſtate they were permitted to enjoy to the excluſion of others, in theſe corporations; or, to uſe the words of the ſtatute (7. Ed. I.) *per quod in manum mortuam devenerint.* Whatever land was given by the ſtate, or by the municipal law was permitted to be given by individuals to the church, was to moſt purpoſes diveſted of thoſe transferable and deſcendible, or inheritable qualities, with which the

the general landed property of the nation was endowed. But the ſtate ſtill retained its general power or controul over it, even after it had arrived into the dead poſſeſſion of the church; for although aliens might be, and were often, in fact, biſhops, abbots, and other ſpiritual corporations in this country, yet the law never permitted them to hold, enjoy, and defend the lands belonging or appropriated to them, even in their corporate capacity, in the ſame manner as natural-born ſubjects*; which could not be, if the property ſo given to, or veſted in theſe ſpiritual corporations, were from that moment taken out of the controul of the civil power.

The pious diſpoſitions of our anceſtors rendered them often laviſh in their donations to the church; whether to procure their ſupplications during life, or, according to their religious belief, to inſure their interceſſions with God after their death, to ſhorten or alleviate their ſufferings in purgatory, is immaterial to conſider; for if this ſort of property could be given to, and be enjoyed by theſe ſpiritual corporations independently of the ſtate, then could not the ſtate any more prevent the donation or inveſtiture of the property, than new-model, alter, or alienate it,

* Vide the caſe of the Prior of Chelſey and other caſes in the year books.

when once made; but we have repeated inſtances of both in this country; therefore it will be generally admitted, that all church livings, benefices, poſſeſſions, or temporalities, are but appendages of the civil eſtabliſhment of religion, and conſequently ſubject to the controul of that power of the ſtate, which could alone inſtitute ſuch an eſtabliſhment. Having already ſaid ſo much of the nature of real ſpiritual powers, which of themſelves cannot produce any civil effect, conſequently cannot give the legal dominion of any landed property, it will be uſeleſs to ſay, that the Biſhop of Rome, even whilſt our anceſtors acknowledged his ſpiritual ſupremacy, could not diſpoſe of, nor poſſeſs one inch of land within the kingdom of England; for it is a matter of notoriety, that although in former times the Popes appointed ſometimes even foreigners, and generally confirmed the appointments made by the king to biſhoprics, yet the admiſſion to, and enjoyment of their temporalities or landed poſſeſſions depended entirely upon the civil uſages and ſanctions of the ſtate. Church lands have at all times been looked upon as a truſt-fund for the edification and benefit of the country, where they were ſituated; and as the benefit and advantages of each country muſt eſſentially be the objects of the care and duty of

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the ſovereign power of the ſtate; ſo the appropriation of ſuch truſt-funds muſt ultimately reſt with the ſtate.

Although every act of the repreſentatives of a community be uncontroulable by any ſuperior human power, yet it does not follow, that every act, which they paſs, is neceſſarily acceptable in the ſight of God, or ſtrictly conſonant with the principles of juſtice or morality: thus, for example ſake, ſuppoſe the legiſlature had, under a very unwarrantable influence of a prince, diverted a part of ſome public fund from the laudable intention of the donor or founder, to the unmerited reward of a court favourite, the act would be binding upon all mankind; nor would individuals be warranted in queſtioning its validity, for want of purity or uprightneſs of intention in the perſons, who paſſed it. If this principle were once admitted, the obedience of the ſubject would be ſquared only by his arbitrary judgment of the conſcientious obligations of his ſovereign. The conſequent confuſion in a ſtate would be unlimited. Hence appears the difference between the free power and the juſt right of acting. It may often be unjuſt in a ſovereign to enjoin, what it will be the duty of a ſubject to perform. Yet no power whatever on earth can enact what is contrary

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to the law of God and reaſon, or what is commonly called *malum in ſe.*

As early as in the thirteenth century, our anceſtors, judging that any further increaſe of opulence to the church would be prejudicial to the ſtate, paſſed the ſtatute of mortmain (18 Ed. I. c. 3.) to prevent any further donation of lands to a ſpiritual corporation. In the year 1307, (35 Ed. I.) the repreſentatives of the nation gave the moſt unequivocal proof of their controul over the poſſeſſions of the church by enacting, that no religious houſe nor community ſhould ſend any part of their revenue to their foreign ſuperiors; though the very ſame act authorized ſuch foreign ſuperiors of the different religious orders to viſit their monaſteries and convents in England, and to examine and regulate *thoſe things only, that belong to regular obſervation and the diſcipline of their order.* The line of difference could not be more ſtrongly marked between the *ſpiritual* and the *civil* power. For if the ſpiritual ſuperiors of theſe religious houſes had any right, power, or juriſdiction over their revenues or poſſeſſions, the parliament could not have prevented them from receiving them. And if theſe abbots, priors, or other ſuperiors, had the free, full, uncontrouled power or right over the temporalities or revenues of their

their convents, they could not have been prevented by parliament from diſpoſing of them, as they might think proper; for the only full teſt of perfect dominion in property is the abſolute freedom of diſpoſing of it. Moreover, if theſe church lands were not then looked upon as a part of the national *truſt-fund*, parliament would not have enacted, that they ſhould be forfeited to the ſtate by ſuch convents, as permitted their *alien ſpiritual* ſuperiors to interfere with or take away any part of their revenues or poſſeſſions.

The church lands and revenues, which in the reign of king Henry VIII. were given to or veſted in lay perſons by parliament, were confirmed to the lay proprietors by the firſt and ſecond Phil. & Mary, c. 8. Now if the act of diveſting them out of the ſpiritual corporations, and veſting them in lay perſons, were ſacrilegious and againſt the law of God, or *malum in ſe*, then was it out of the power of parliament to enact it, and the act was of itſelf invalid, and an invalid act can receive no confirmation, for *confirmare eſt id, quod eſt, firmum facere.* No length of time could induce an obligation of complying with an act of parliament, that enacted *malum in ſe*; but in this caſe, barely twenty years had intervened between the paſſing of the acts and their confirmation. It appears evident, that the

parliament in queen Mary's days, after their reconciliation with the ſee of Rome, held themſelves to poſſeſs the ſame power or controul over the church lands, as did the parliament in the time of king Henry her father; for although they might have been induced by many political reaſons to confirm the poſſeſſions of the church lands to the then lay proprietors, yet the ſame reaſons for peace and quiet could not apply to the crown, as to private individuals; and by that very act were all ſuch lands and revenues confirmed to the queen, which had not been diveſted out of the crown during the two preceding reigns. Whence we muſt neceſſarily conclude, that although parliament be never juſtifiable in miſapplying any part of the national fund; yet do they command the ſame power and controul over the revenues of the church, as over any other part of that fund; and are equally bound by their duty and truſt to model and regulate it, as they ſhall think the preſervation and welfare of the community require.

The ſtatutes *for the clergy* and *of proviſors of benefices* (25 Ed. III) and of *premunire for ſuing in a foreign realm, or impeaching of judgment given*, (27 Ed. III.) are founded in the power of parliament, over the temporalities of the church.

CHAP.

CHAP. V.

OF SOME MODERN DOCTRINES CONCERNING THE RESISTANCE OF INDIVIDUALS AGAINST THE CIVIL ESTABLISHMENT OF RELIGION.

NO man of the ſlighteſt obſervation or reflection can at this day be ignorant of the confidence, with which the malcontents of the hour inveigh againſt the eccleſiaſtical and civil eſtabliſhment of our preſent conſtitutional polity; inſiſting upon the abſolute ſubverſion of the one, and a general reformation and alteration of the other. But it is an obvious queſtion, Who are theſe malcontents? They are not only compoſed of the remains of ſome of the old ſets of diſſenters from the eſtabliſhed church, ſuch as anabaptiſts, puritans, independants, &c. but more generally of the various ſets of modern ſubdiſſenting improvers upon their ancient maſters, whom Dr. Price ſeems, with unbounded affection and zeal, to have admitted as his worthy aſſociates and fellow labourers in the good common cauſe of diſſent from the principles, and reſiſtance againſt the eſtabliſhment of the national church. Of theſe Mr. Burke ſpeaks, with

The malcontents diſcontented with the preſent eſtabliſhment.

with his uſual elegant and nervous poignancy, * "If the noble ſeekers ſhould find nothing to ſatisfy their pious fancies, in the old ſtaple of the national church, or in all the rich variety to be found in the well-aſſorted warehouſes of the diſſenting congregations, Dr. Price adviſes them to improve upon nonconformity, and to ſet up, each of them, a ſeparate meeting-houſe, upon his own particular principles †. It is ſomewhat remarkable, that this reverend divine ſhould be ſo earneſt for ſetting up new churches, and ſo perfectly indifferent concerning the doctrines which may be taught in them. His zeal is of a curious character. It is not for the propagation of his own opinions, but of any opinions. It is not for the diffuſion of truth, but for the ſpreading of contradiction. Let the noble teachers but diſſent, it is no matter from whom or from what. This great point once ſecured, it is taken for granted their re-

Dr. Price's encouragement to diſſent.

* Reflections on the Revolution in France, p. 14, and 15.

† "Thoſe who diſlike that mode of worſhip, which is preſcribed by public authority, ought, if they can find no worſhip out of the church, which they approve, to ſet up a ſeparate worſhip for themſelves; and by doing this, and giving an example of a rational and manly worſhip, men of weight, from their rank and literature, may do the greateſt ſervice to ſociety, and the world." P. 18, Dr. Price's Sermon.

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ligion will be rational and manly. I doubt whether religion would reap all the benefits which the calculating divine computes, from this great company of great preachers. It would certainly be a valuable addition of non-deſcripts to the ample collection of known claſſes, genera, and ſpecies, which at preſent beautify the *hortus ſiccus* of diſſent."

Whenever, in the courſe of this work, I ſhall have occaſion to mention any ſets of perſons known by a common deſcription or appellation of religious ſocieties, or ſectaries diſſenting from the eſtabliſhed church, I do not mean even to hint at the *religious* or theological tenets, doctrines, or principles, by which they differ from it or from each other.

The author's intention is to diſcuſs the political principles only of diſſenters.

Polemical diſcuſſion is not my province. And I have no other motive nor reaſon to refer to or animadvert upon the tenets, doctrines, or principles of any ſuch ſocieties or ſectaries, but inaſmuch as they contradict or counteract thoſe general and fundamental principles of civil government, upon which the ſyſtem of our preſent conſtitution and government is formed and preſerved. The inhabitants of this iſland certainly form one entire community, to whom it is fully competent to model and eſtabliſh that conſtitution and ſyſtem of government, which they ſhall chuſe; and

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from this competency ariſes the indefeaſible right, which the community poſſeſſes, of checking and puniſhing ſuch refractory and ſeditious members of her body, who, by their open and avowed principles and actions, endeavour to weaken, diſturb, or ſubvert that political œconomy of the ſtate, which is the deliberate and free choice of the community. It will therefore be more proper in future to treat and ſpeak of theſe perſons, rather as political opponents of the principles of the ſtate, than religious diſſenters from the doctrines of the church of England.

The right of the community to check and puniſh refractory members.

By examining the doctrines of Dr. Prieſtley, upon this very important ſubject, the application of the principles, which I have already laid down, as admitted by all, will more clearly appear. * " In examining the right of the civil magiſtrate to eſtabliſh any mode of religion, or that of the ſubject to oppoſe it, the *goodneſs* of the religion, or of the mode of it, is not to be taken into the queſtion; but only the propriety (which is the ſame with the utility) of the civil magiſtrate, as ſuch, interfering in the buſineſs. For what the magiſtrate may think to be very juſt, and even conducive

Dr. Prieſtley's doctrine's about reſiſtance examined.

* Dr. Prieſtley's Eſſay on the firſt Principles of Government, p. 141.

to

to the good of ſociety, the ſubject may think to be wrong and hurtful to it."

If Dr. Prieſtley here means, by the term *magiſtrate*, the ſupreme legiſlative power of the ſtate, from what has already been ſaid, it will clearly appear, that the ſubject is bound and concluded by the act of his own truſtees and delegates; and ſuch are the three eſtates of our legiſlature, as I ſhall hereafter more particularly obſerve. It is not poſſible, therefore, in the preſent ſyſtem of the Britiſh conſtitution, for the ſubject (if by the term *ſubject* is meant the majority of the community) to think that wrong and hurtful, which the repreſentatives of the community, who muſt be ſuppoſed to ſpeak the language of the real majority, think to be juſt and conducive to the good of the ſociety. But although the minority of the community ſhould think ſo differently of the act of the majority, their diſapprobation or conſideration of the meaſure will neither invalidate the act, nor juſtify any reſiſtance againſt it, when it has once acquired the force of a law: for * "every law is a direct emanation of the ſovereignty of the people," conſequently muſt be taken for the act of the majority.

* Macintoſh, p. 297.

But if by the term *magiſtrate*, he means that executive magiſtratical power, which by the conſtitution is veſted in the king or ſupreme executive power of the ſtate, and from him is derived to all ſubordinate civil magiſtrates throughout the realm, the obſervation is perfectly abſurd and irrelevant: for the executive magiſtrate has no legiſlative power; and he is equally bound by his duty and truſt to enforce the laws, which make or which concern the civil eſtabliſhment of religion, as any other laws whatſoever, which is very pointedly noticed by Dr. Prieſtley himſelf in another part of his works. * "The civil magiſtrate has nothing to do with the truth of religion, being obliged to provide for that, which is profeſſed by the majority of the ſubjects, though he himſelf ſhould be of a different perſuaſion. Thus the king of Great Britain muſt maintain epiſcopacy in England and preſbyterianiſm in Scotland, whether he be a preſbyterian as king William, a Lutheran as Geo. I. or a true churchman as his preſent Majeſty."

The civil magiſtrate nothing to do with the truth of religion.

† "Others have the moderation and good ſenſe to admit the reaſonableneſs of perſons

* Letters to Mr. Burke, Lett. vi. p. 51.

† Prieſtley's Eſſays on the Firſt Principles of Government, p. 145.

being

being allowed to judge for themſelves, and to think as they pleaſe in matters of religion, and even to exerciſe whatever mode of religion their conſciences approve of; but they will not admit of any thing, that has a tendency to increaſe the obnoxious ſect, no publication of books, or other attempts to make proſelytes, nor even a reflection upon the eſtabliſhed religion, though it be neceſſary to a vindication of their own. But what ſignifies a privilege of judging for ourſelves, if we have not the neceſſary means of forming a right judgment, by the peruſal of books containing the evidence of both ſides of the queſtion? What ſome diſtinguiſh by the names of *active* and *paſſive* oppoſition to an eſtabliſhed religion, differ only in name and degree. To defend myſelf, and to attack my adverſary, is, in many caſes, the very ſame thing, and the one cannot be done without the other."

This aſſumption of a right to reprobate and reſiſt the civil eſtabliſhment of religion appears to be founded upon the preſumption, that it is equally competent for every individual of the community to form his own mind upon the ſubject of religion. So ſays Dr. Prieſtley to Mr. Burke, * "It is no un-

* Dr. Prieſtley's Letters to Mr. Burke, Let. vi. p. 51.

common thing for what appears to be profound and extenſive wiſdom to one man, to appear the extreme of folly to another; and unfortunately, owing perhaps to the difference of our education and early habits, this is preciſely the difference between you and me. What you admire I deſpiſe; and what you think highly uſeful, I am perſuaded is highly miſchievous." Now were this a matter of mere perſonal variance between Dr. Prieſtley, and Mr. Burke upon a point of controvertible matter, thoſe, who might think it worth their while to take the point of difference under their conſideration, would either decide upon it by the degree of deference and authority, which they would allow to the conteſting parties, or by the internal merits and evidence of the queſtion in diſpute. But in the preſent caſe the queſtion is, how far any one individual is authoriſed to oppoſe the ſolemn and formal act of the majority of the community. Mr. Burke has expreſſed the known and avowed ſentiments of the majority of this community, who have for ſome centuries thought proper to apply a part of their power and authority, in ſupporting that religious ſyſtem, which was the reſult of their own free election. Dr. Prieſtley on behalf of himſelf, and of ſome

The diſpute inſtituted by Dr. Prieſtley upon falſe grounds.

diſſenters and ſub-diſſenters from this religious eſtabliſhment, (though avowedly the minority of the community) not only ſets up his own judgment in defiance and contradiction to the moſt ſolemn act of the majority, but he alſo treats it as an act of *extreme folly and miſchief.*

As the legiſlative power does not attempt to ſubject the intellects of individuals to the propriety or rectitude of its acts, but only to enſure their external and peaceable ſubmiſſion to them when once enacted; the want of reaſon, or even depravity of motive in enacting the laws, can never juſtify a public or external oppoſition or reſiſtance againſt them. I do not preciſely know the proportion, which the number of diſſenters of all denominations in this country bears to that of the eſtabliſhment; but for argument ſake I will ſuppoſe, that three out of nine millions are diſſenters: there will remain ſix millions, who certainly have individually as much right, and collectively more right to give civil ſanction to their religion, than the three millions have to object againſt it. For by their making ſuch an eſtabliſhment, they do not enforce nor impoſe the belief of their religion upon the minds and conſciences of individuals; but preſuming, as the fact is,

The reaſons and motives of the legiſlators in paſſing laws, no juſtification of thoſe who reſiſt them.

that the adoption of religion is the free act of each of them, they agree to acknowledge and declare by a public civil act of that power, which is avowedly in them, that a *particular* religion is that, in the adoption of which the majority does concur. And becauſe the majority does thus concur in its adoption, they think proper to appropriate a certain part of the national fund, of which they are the diſpenſers, to the maintenance and ſupport of the miniſters of this religion, and they inveſt them, according to their degrees, with certain civil or legal rights, benefits, and advantages; and in theſe alone conſiſts the civil eſtabliſhment of a religion. In juſtice, however, to the majority of our community, who inſiſt upon ſuch an incorporation of an eccleſiaſtical with the civil eſtabliſhment of the ſtate, I cannot omit to lay before my readers ſome of the many reaſons and motives for ſuch their determination.

Reaſons why the community chuſe to make a civil eſtabliſhment of religion.

* "I aſſure you, I do not aim at ſingularity. I give you opinions, which have been accepted amongſt us from very early times to this moment, with a continued and general approbation, and which indeed are ſo worked into my mind, that I am unable to

* Mr. Burke's Reflections on the Revolution in France, p. 147, 148.

diſtinguiſh

diſtinguiſh what I have learned from others, from the reſults of my own meditation.

" It is on ſuch principles that the majority of the people of England, far from thinking a religious national eſtabliſhment unlawful, hardly think it lawful to be without one. In France you are wholly miſtaken, if you do not believe us above all other things attached to it, and beyond all other nations; and when this people has acted unwiſely and unjuſtifiably in its favour (as in ſome inſtances they have done moſt certainly) in their very errors you will at leaſt diſcover their zeal.

" This principle runs through the whole ſyſtem of their polity. They do not conſider their church eſtabliſhment as convenient, but as eſſential to their ſtate; not as a thing heterogeneous and ſeparable; ſomething added for accommodation; what they may either keep up or lay aſide, according to their temporary ideas of convenience. They conſider it as the foundation of their whole conſtitution, with which, and with every part of which, it holds an indiſſoluble union. Church and ſtate are ideas inſeparable in their minds, and ſcarcely is the one ever mentioned without mentioning the other."

I do not wiſh, much leſs do I undertake to prove, that Mr. Burke's reaſons for thinking a religious eſtabliſhment in our conſtitution *profound and extenſive wiſdom*, are ſtronger and more concluſive, than Dr. Prieſtley's are for thinking it *the extreme of folly, and very miſchievous*. But I do contend, that conſidering Mr. Burke and Dr. Prieſtley as two individual members of the Engliſh community, each of them has an equal right to form his own mind upon this ſubject, as well as upon every other ſubject of legiſlation; and that very ſame right does every other individual of the nine millions poſſeſs. It ſuffices therefore, that a majority of theſe nine millions chuſe to have ſuch a religious eſtabliſhment; it is evident, from what has been before ſaid, that the minority, though they ſhould be actuated by the better reaſons, will nevertheleſs be concluded by the act of the majority, though the latter ſhould be influenced by the weaker reaſons. This is a fundamental principle of ſociety, and conſequently of all civil government. If it be once broken in upon, an irreparable breach will be immediately made in the conſtitution, that will enſure and accelerate the total diſſolution of government; for no human law can have force or efficacy upon

The majority muſt conclude the whole,

though their reaſons be leſs convincing than thoſe of the minority.

upon any other principle. If this principle be withdrawn from one law, it is withdrawn from all; and then the firmeſt bulwark of the wiſeſt legiſlators will crumble into an impalpable ſubſtance, and be irrevocably ſcattered by the weakeſt breath that reaches it. Hence may be ſeen the difference between principles and rules; the former are univerſally and unexceptionably true and applicable to all poſſible caſes; the latter admit of exceptions, which are even ſaid to ſtrengthen and eſtabliſh the rule.

A principiis nunquam recedendum: True principle will carry us through every difficulty, that can poſſibly be ſtarted by the enemies of our conſtitution; for I muſt ever call thoſe enemies to the ſtate, who diſavow and oppoſe the fundamental principles of our conſtitution and government. The moſt feeling ground, upon which Dr. Prieſtley ſeems to combat againſt the civil eſtabliſhment of a religion in a ſtate, is that of the maintenance provided and ſecured by the ſtate, for the miniſters, teachers, and guardians of their religion. * "Let it not be ſaid that the church of England would have the impudence, if it had the power, to collect its

Dr. Prieſtley diſſatisfied with tythes.

* Prieſtley's Letters to Mr. Burke, Let. vi. p. 59.

tythes

tythes from every country in Chriſtendom, though every pariſh ſhould be a *ſinecure*, and all their biſhops be denominated in *partibus*. Let there be an appearance, at leaſt, which now there is not, of ſome regard to *religion* in the caſe, and not to mere revenue. Often as I have urged this ſubject, and many as have been thoſe, who have animadverted upon my writings, hardly any have touched upon this; they feel it to be tender ground; they can, however, keep an obſtinate ſilence; they can ſhut their ears and turn their eyes to other objects, when it is not to their purpoſe to attend to this."

The obligation to pay tithes equal upon all.

Were I merely anſwering the objections of Dr. Prieſtley, I ſhould content myſelf with inſiſting, that the majority of the community had choſen to incorporate an eccleſiaſtical eſtabliſhment as an eſſential part in their civil conſtitution; that this eccleſiaſtical eſtabliſhment ſhould be guided and preſerved by biſhops, and their inferior clergy; that they ſhould be maintained by certain portions or allotments of the national produce or property; and that therefore the diſſenting minority were effectually bound, as members of the community, to contribute their quota in tythes, or otherwiſe, towards the maintenance of that clergy, to whom the act of the majority

majority had given not only a legal ſubſiſtence, but a legal right to poſſeſs, enjoy, and defend the maintenance and civil advantages allotted to them by the community; for theſe they do not enjoy by virtue of their ſpiritual ordination, but as the free and voluntary gift or offering of the community. This alſo is a *direct emanation from the ſovereignty of the people.*

Since Dr. Prieſtley, though avowedly of the diſſenting minority, ſo warmly inſiſts upon *the folly and miſchief of ſupporting a religious eſtabliſhment*, I ſhall take the liberty of ſubmitting to the public ſome of the reaſons and motives, that appear to have operated in favour of it upon the majority of this community; for he certainly will not refuſe to the majority of the community, the right of grounding their acts upon reaſons and motives; nor can he prevent thoſe reaſons and motives from operating their effect upon ſuch individuals as may feel their force.

Reaſons why the majority prefer their preſent religious ſyſtem.

* " So tenacious are we of the old eccleſiaſtical modes and faſhions of inſtitution, that very little alteration has been made in them ſince the fourteenth or fifteenth century, adhering in this particular, as in all things elſe,

* Burke's Reflections on the Revolution in France, p. 148, 149, 150.

to

to our old ſettled maxim, never entirely nor at once to depart from antiquity. We found theſe old inſtitutions, on the whole, favourable to morality and diſcipline; and we thought they were ſuſceptible of amendment, without altering the ground. We thought that they were capable of receiving and meliorating, and above all, of preſerving the acceſſions of ſcience and literature, as the order of providence ſhould ſucceſſively produce them. And, after all, with this gothic and monkiſh education (for ſuch it is in the ground-work) we may put in our claim to as ample and as early a ſhare in all the improvements in ſcience, in arts, and in literature, which have illuminated and adorned the modern world, as any other nation in Europe; we think one main cauſe of this improvement was our not deſpiſing the patrimony of knowledge, which was left us by our forefathers.

" It is from our attachment to a church eſtabliſhment, that the Engliſh nation did not think it wiſe to entruſt that great fundamental intereſt of the whole, to what they truſt no part of their civil or military public ſervice; that is, to the unſteady and precarious contribution of individuals. They go further; they certainly never have ſuffered, and never will ſuffer, the fixed eſtate of the church to be converted

converted into a penſion, to depend on the treaſury, and to be delayed, with-held, or perhaps to be extinguiſhed by fiſcal difficulties; which difficulties may ſometimes be pretended for political purpoſes, and are, in fact, often brought on by the extravagance, negligence, and rapacity of politicians. The people of England think, that they have conſtitutional motives, as well as religious, againſt any project of turning their independent clergy into eccleſiaſtical penſioners of ſtate. They tremble for their liberty, from the influence of a clergy dependent on the crown; they tremble for the public tranquillity, from the diſorders of a factious clergy, if it were made to depend upon any other than the crown. They therefore made their church, like their king and their nobility, independent.

" From the united conſiderations of religion and conſtitutional policy, from their opinion of a duty to make a ſure proviſion for the conſolation of the feeble, and the inſtruction of the ignorant, they have incorporated and identified the eſtate of the church with the maſs of *private property*, of which the ſtate is not the proprietor, either for uſe or dominion, but the guardian only, and the regulator. They have ordained, that the proviſion

viſion of this eſtabliſhment might be as ſtable as the earth on which it ſtands, and ſhould not fluctuate with the Euripus of funds and actions."

I have now, I hope, adduced ſufficient reaſons and arguments to convince my readers, that every community is fully competent to make a civil eſtabliſhment of that religion, which the majority of the community ſhall find it their duty to adopt and follow; and conſequently, that our preſent church eſtabliſhment forms an eſſential part of the Engliſh conſtitution: and from hence ariſes the firſt conſtitutional diviſion of the community, or people, into *clergy* and *laity*, whoſe ſeveral and reſpective rights and duties in the ſtate, I ſhall hereafter explicitly ſet forth.

Diviſion of the people into clergy and laity.

* "Had I inferred the truth of our religion from its civil eſtabliſhment, the deiſts might have treated the argument with that levity which Mr. Chandler adviſes; but a deiſt of common ſenſe might perceive, that I appealed to the laws of our eſtabliſhment, not for the conviction of his underſtanding, but the correction of his inſolence. Where the truth of the Chriſtian religion was the queſ-

* Rogers's Vindication of the Civil Eſtabliſhment of Religion, ſect. i. p. 191.

tion

tion before me, I uſed other arguments; but when a private ſubject took upon him publicly to oppoſe the right of the legiſlator to enact any ſuch law, to repreſent this power as unjuſt and tyrannical, and under theſe characters to diſſuade all ſubmiſſion to it, theſe I think actions inconſiſtent with the obligations of a ſubject, and that the execution of our laws may juſtly be called for in reſtraint of them. The truth of a religion depends on its proper grounds. If it was falſe before it was eſtabliſhed, the eſtabliſhment will not make it true; and he, who from the evidence of the thing is convinced it is falſe, cannot upon any authority believe it true."

Civil eſtabliſhment of religion of the ſame force as any other civil law.

From what has been ſaid in this and the foregoing chapter, I hope it will ſufficiently appear, that the ſanction, which the laws give to the eſtabliſhment of the church of England throughout England, and to preſbytery throughout Scotland, is in its tendency and effects merely of a civil nature; conſequently, that the obligation of ſubmitting to it, is the very ſame as the obligation of ſubmitting to any other civil law whatever. Now, every external and public diſavowal of, or oppoſition to the civil exactions of the legiſ-

lature, muſt be criminal in an individual ſubject to the power of that legiſlature: But I ſhall hereafter have occaſion to ſpeak more fully upon the nature of crimes againſt the ſtate.

CHAP.

CHAP. VI.

OF THE EFFECTS OF DENYING TRUE PRINCIPLES.

IT has been uſual for moſt writers both ancient and modern, in diſcuſſing the ſubject of our conſtitution, to endeavour to trace its origin from the earlieſt antiquity, and to identify its form and ſubſtance through all the various modifications, changes, reformations, and revolutions, which it has undergone ſince the firſt eſtabliſhment of ſociety, or of a community in this country. I beg the liberty of following a very different courſe. I eſtabliſh a principle, which, if it ever exiſted, muſt now exiſt, and if it now exiſt, muſt have always exiſted; for what gives exiſtence to a principle, is its univerſal and invariable truth, which, if it exiſt in one moment, muſt eſſentially have exiſted from all eternity; I need not, therefore, ſeek for its importation into this iſland by the Trojan prince Brutus; nor enquire whether it were borrowed by our Britiſh anceſtors from their Gallic neighbours; nor whether it were the peculiar growth of our native ſoil; whether it grew out of the hedge-rowed towns or encampments of our warlike anceſ-

Principle the true ſource and origin of our conſtitution.

tors, or iſſued out of the ſanctuaries of their myſterious Druids; whether it were impoſed upon them by heathen Rome, or infuſed into them by Chriſtian Rome; whether it were tranſplanted from Germany with our Saxon conquerors and progenitors, nor whether it attended the deſpotiſm of the Norman conqueror; nor, in a word, whether it flouriſhed with vigour and luxuriancy, or withered in apparent decay, under the ſeveral houſes of Tudor, Stuart, Naſſau, and Brunſwick.

Principles true from all eternity.

At this moment, this principle, *the ſovereignty of power ever did, and now does, unalienably reſide in the people*, exiſts, becauſe it is univerſally and invariably true; and it muſt for ever have exiſted with the ſame force and efficacy, that it now does; for univerſal truth excludes all degrees. From this invariable and ever operative principle have ariſen all the various changes, innovations, and improvements, which have at different times been effected in our conſtitution and government, by the means of reformation and revolution. The coercive introduction or impoſition of new laws by the force of arms, can never make a part of the conſtitution and government of a free people, till they have been voluntarily ſubmitted to, recognized, accepted, or confirmed by the act of the community.

nity.* I ſhall hereafter have occaſion, and, indeed, be under the neceſſity of conſidering more minutely the application of this principle to what we commonly call the *reformation* and the *revolution.*

Unfortunately for this country, the different occurrences, which have from time to time brought theſe political topics into diſcuſſion, have been productive of ſo much acrimony, venom, and heat, that the cool voice of reaſon has been ſeldom heard by either party, and conſequently, conviction of the mind has rarely followed the diſcuſſion. For it is very certain, that few or none of the political writers of thoſe days of animoſity, either could or would ſeparate, on one ſide, the principle, " that a ſupreme power reſides in the people" from rebellion and treaſon; or, on the other ſide, diſtinguiſh between the legal prerogative of a lawful monarch, and the unwarrantable deſpotiſm of an uſurping tyrant. It is the frequent boaſt of moſt modern writers, and of all modern theoriſts, that we live in an age enlightened beyond all others; and conſequently, that our preſent exiſtence exalts us, in ability and information, far above the level

Heat of party has prevented cool diſcuſſion.

* " Laws they are not, therefore, which public approbation hath not made ſo." Hooker's Eccl. Pol. l. i. ſect. 10.

of our anceſtors and predeceſſors. I have already declared myſelf to be little flattered with the advantage, though I will not diſſemble, that the prepoſſeſſion of ſuch a conviction muſt, in a great meaſure, counteract the pernicious, though frequent, effects of hereditary and ſyſtematical prejudices. The learned biſhop of Worceſter, in talking of the impotent threats and attempts of the ſee of Rome to depoſe our ſovereigns, ſays, that the Papiſts uſed all their ingenuity to juſtify and eſtabliſh it; and that * "one of their contrivances was, by ſearching into the origin of civil power, which they brought rightly, though for this wicked purpoſe, from the people; for they concluded, that if the regal power could be ſhewn to have no divine right, but to be of human and even popular inſtitution, the liberty, which the pope took in depoſing kings, would be leſs invidious." The maintenance of this doctrine cannot, I think, be fairly attributed to any ſuch motive; for when the popes of Rome ſo fooliſhly aſſumed the right of depoſing temporal ſovereigns, they evidently founded their idle pretenſions upon the *ſpiritual ſupremacy*, which they claimed over all Chriſtians; they muſt conſe-

The maintenance of true principles unfairly attributed to corrupt motives.

* Dr. Hurd's Moral and Political Dialogues, vol. ii. p. 300.

quently

quently have conceived a better, and might have ſet up a right more plauſible in thoſe days, in quality of Chriſt's *vice-gerents* upon earth, to diſpoſe of rights holden by this ſpiritual *jure divino tenure*, than of ſuch as were merely of a ſecular or temporal nature. For the popes have always been allowed, by all Roman catholics, a power to diſpenſe, in certain caſes, with ſpiritual obligations, ſuch as vows or promiſes made by individuals immediately to Almighty God; but never to diſpenſe with, or annul a civil or moral obligation of one individual to another, ſo as to weaken or defeat the rights of a third perſon. The learned prelate, however, very fairly accounts for the former prevalence of the oppoſite doctrine throughout this nation. * "The proteſtant divines went into the other extreme; and to ſave the perſon of their ſovereign, preached up the doctrine of *divine right*. Hooker, ſuperior to every prejudice, followed the truth; but the reſt of the reforming and reformed divines ſtuck to the other opinion, which, as appears from the homilies, the Inſtitution of a Chriſtian Man, and the general ſtream of writings in thoſe days, became the opinion of the church, and was, indeed, the received pro-

The maintenance of falſe principles attributed to a laudable motive.

* Dr. Hurd's Moral and Political Dialogues, vol. ii. p. 301.

teſtant doctrine: and thus unhappily aroſe in the church of England, that pernicious ſyſtem of divine indefeaſible right of kings, broached indeed by the clergy, but not from thoſe corrupt and temporizing views, to which it has been imputed. The authority of thoſe venerable men, from whom it was derived, gave it a firm and laſting hold on the minds of the clergy; and being thought to receive a countenance from the general terms, in which obedience to the civil magiſtrate is ordained in ſcripture, it has continued to our days, and may, it is feared, ſtill continue to perplex and miſlead the judgment of too many amongſt us." I am particularly happy in being able to adduce the high and unbiaſſed authority of ſo reſpectable a prelate, in ſupport of my own reaſoning.

Not being warped by any party prejudice or principle, I am free to own my aſtoniſhment, that ſo many learned and reſpectable perſonages of every profeſſion and deſcription ſhould ſo long have ſhut their eyes, or ſtopped their ears, or ſteeled their hearts againſt the truth of firſt principles. This reſpectable prelate has endeavoured to account for it; though he is very far from juſtifying it.

"The

* "The growth of puritaniſm, and the republican ſpirit, in order to juſtify its attack on the legal conſtitutional rights of the crown, adopted the very ſame principles with the jeſuited party. And, under theſe circumſtances, it is not to be thought ſtrange, that a principle, however true, which was diſgraced by coming through ſuch hands, ſhould be generally condemned and execrated. The crown and mitre had reaſon to look upon both theſe ſorts of men as their mortal enemies. What wonder then, that they ſhould unite in reprobating the political tenets, on which their common enmity was juſtified and ſupported?"

True principles oppoſed becauſe urged by the enemy.

Dr. Prieſtley has ſaid, with much truth, what I hope he will allow me to apply to my readers. † "I make no apology for the freedom, with which I have written. The ſubject is, in the higheſt degree, intereſting to humanity; it is open to philoſophical diſcuſſion, and I have taken no greater liberties, than becomes a philoſopher, a man, and an Engliſhman. Having no other views, than to promote a thorough knowledge of this im-

Proper apology for writing freely upon intereſting ſubjects.

* Dr. Hurd's Moral and Political Dialogues, vol. ii. p. 303.

† Preface to Dr. Prieſtley's Eſſays on the Firſt Principles of Government, p. xiii.

portant ſubject; not being ſenſible of any biaſs to miſlead me in my inquiries, and conſcious of the uprightneſs of my intentions, I freely ſubmit my thoughts to the examination of all impartial judges, and the friends of their country and of mankind. They, who know the fervour of generous feelings, will be ſenſible, that I have expreſſed myſelf with no more warmth, than the importance of the ſubject neceſſarily prompted, in a breaſt not naturally the coldeſt; and that to have appeared more indifferent, I could not have been ſincere."

Neceſſity of forming our principles of policy.

I am ſenſible, that I have undertaken a very perilous taſk; *periculoſæ plenum opus aleæ.* From the open and boaſted wiſhes, and the actual attempts of many individuals to alter or ſubvert the preſent form of our government, I have found it incumbent upon me to examine and regulate my ſubordinate civil duties upon ſome fixt principles of immutable policy. I entered upon the taſk with much earneſtneſs, and perfectly unbiaſſed by any party; in my progreſs I have ſeen and trembled at many rocks, againſt which whole parties have appeared to me blindly and voluntarily to have run; by varying my courſe, I flatter myſelf I have avoided them; and if my diſcoveries be juſt, I know of no conſideration,

conſideration, that can diſpenſe with my ſubmitting to my countrymen a new chart of that coaſt, upon which ſo many of them have unfortunately periſhed.

Whatever diviſions of parties have exiſted in our country for theſe three laſt centuries, whether between the retainers and reformers of the old religion, between the church and the preſbytery, the round heads and the royaliſts, the whigs and the tories, the non-jurors and the revolutioniſts, the original efficient cauſes of the ſeveral diviſions into party have ceaſed or nearly diſappeared in the variety and change of circumſtances, which the kingdom has ſince experienced. Such (if any) of theſe parties as ſtill ſubſiſt, ſeem rather to have received a mere nominal exiſtence by hereditary deſcent, than to retain any of their conſtituent parts or fundamental properties. The nation, in fact, at preſent appears to me to be divided into two parties only, which have abſorbed all the other; the *contents* with the preſent eſtabliſhment, and the *non-contents*. The former far exceed the latter in numbers; and from the nature of the diviſion, the majority muſt be actuated by a more uniform principle, than the minority. For the approbation of the particular conſtitution and government, which the

Little remains of the old ſpirit of different parties.

Preſent parties of *contents* and *non-contents*.

the nation has received from their anceſtors, retains the majority in one body; whereas, the diſlike of the whole, or part of the ſame conſtitution and government; the preference of any other, than the eſtabliſhed religion and government; the averſion from any church or ſtate eſtabliſhment whatever; the wiſhes and expectancies of the indigent and diſtreſſed to profit by a ſyſtem of equalization; the allurements of a ſcramble to luſt, avarice, and ambition; the perſonal envy, jealouſy, hatred, inſult, injury, diſappointment, or loſſes of individuals, are amongſt the multifarious motives, reaſons, and inducements, which bring together a ſet of diſcordant individuals, who, from the moment, and by the terms of their engagement, ſacrifice their ſeveral heterogeneous principles to the common erected ſtandard of diſcontent; for in the political, as well as in the phyſical ſyſtem, the moſt oppoſite ingredients may, like vinegar and oil, be ſo incorporated as to bear the appearance of a perfect coalition. When, therefore, I ſhall in future conſider or ſpeak of this oppoſite party, which I ſhall in general call the *minority*, I ſhall drop every idea of the nature of their original component parts, and diſtinguiſh them only from their opponents by that common quality, which conſti-

Principles and motives of the *malcontents*.

tutes

tutes them a party of malcontents, in oppoſition to the majority of the community, who are happy under, and therefore wiſh and intend to preſerve the preſent form of their conſtitution and government.

Whoever views with perfect impartiality the preſent internal political ſtate of this country, will, I am confident, readily admit, that it would be a fruitleſs attempt to ſingle out one individual from the whole minority, who ſides with that party, merely from the motives, which diſtinguiſhed one of the old parties of this country from the other, at the time of their original formation.

I may, perhaps, be ſingular, (this publication will prove how far I am warrantable) in attributing the formation, the continuance and the encreaſe of all ſuch parties, as have at different times divided our country, to the inconſiderate and haſty, though, perhaps, well meant denial of true principles. It is no leſs ſingular than true, that the churchman, the royaliſt, and the tory, admitting and wiſhing to preſerve the true conſtitutional form of the government in being, were ſo blinded in their zeal, as to deny the truth of firſt principles, upon which the puritan, the independant, and the republican, unwarrantably engrafted the falſeſt doctrines. Inſtead of

Greateſt evils ariſe from the inconſiderate denial of true principles.

ſhewing, that theſe doctrines were not conſequences deducible from the principles, (for every conſequence is virtually contained in its premiſes), they denied abſolutely the principles, which were true, becauſe they diſapproved of doctrines, which were falſe, and which, conſequently, could not be fairly drawn from true principles. Thus, when the alterations and differences of the oppoſite parties came to be publicly agitated, they ſeldom went further, than the truth or falſity of the principles themſelves; in which conteſts the ſtrength of the argument was neceſſarily with thoſe, who contended for the principles; and whilſt that party had the addreſs to keep up the controverſy upon this ground only, they were ſure of making proſelytes of all thoſe, who had reſolution or ability to form a judgment of their own.

The misfortunes, which have heretofore happened to our unhappy country, from the conteſts of theſe oppoſite parties, are of too ſerious a nature not to rouze every true patriot to the exertion of his utmoſt efforts to prevent a repetition of them. Nothing can be more certain, than that a party of no inconſiderable number of malcontents does at this moment exiſt in this country; nothing more evident, than that the party will gain

or

or loſe ſtrength in proportion to the acceſſion or deſertion of its numbers; and nothing ſo attractive, as the plauſibility and truth of the principles, which are ſuppoſed or repreſented to actuate and ſupport the party. It is flattering to all men to judge in their own cauſe; it is the favourite maxim of modern politicians, to inculcate the right of every one to judge and act for himſelf; and it is artfully holden out by many, that whoever is not directed by his own opinion and judgment, is kept in darkneſs, and deprived of that freedom, which has been given to every individual by an allwiſe Creator.

When I call to my recollection the effects of former attempts to deduce falſe doctrines from true principle, I am neceſſitated to conclude, that if ſome true principles now eſtabliſhed and ſupported by the minority, are denied by the majority, the daily deſertions from the one to the other will very quickly invert the preſent proportion of their reſpective numbers; for undeniable truth will ever make its own way, and by degrees gain over the multitude; amongſt whom more will be, in the end, left to the unbiaſſed freedom of their own judgment, than to the dictates of intereſted power and influence. It was long ago ſaid, *decipimur ſpecie recti:* when

Truth will in the end make its own way.

when depravity diſpoſes to evil, the ſtrongeſt incentive to the actual commiſſion of it is a plauſible appearance of its rectitude. Much as I reprobate the modern doctrine of civil equalization, with all its tremendous train of deſtructive concomitants, ſo do I hold, that the denial of the truth of uncontrovertible principles muſt rather neceſſitate, than provoke men into the adoption of any doctrine, which leaves them the liberty of a free aſſent to ſuch ſelf-evident propoſitions.

I am happy in being ſanctioned in my principle of reaſoning, by the great apoſtle of modern liberty. * "The jeſuits," ſays he, "about two centuries ago, in order to vindicate their king-killing † principles, happened,

* Prieſtley's Eſſays upon the Firſt Principles of Government, p. 27, 28.

† The works of Buſenbaum, a German jeſuit, were burnt by the late parliament of Paris, for teaching theſe principles. It will be candid, and, perhaps, ſatisfactory to the curious, to ſtate the words, in which this king-killing doctrine is expreſſed by this author; as the judgment upon it will vary according to the admiſſibility of the doctrines of paſſive obedience and non-reſiſtance. "*Ad defenſionem vitæ & integritatis membrorum, licet etiam filio, religioſo & ſubdito ſe tueri, ſi opus ſit, cum occiſione, contra ipſum parentem, abbatem, principem; niſi forte propter mortem hujus ſecutura eſſent nimis magna incommoda, ut bella, &c.*" lib. 3. pars 1. de Homicidio, art. viii. "To defend one's life, or limbs, it is lawful for a child,

pened, among other arguments, to make uſe of this great and juſt principle, that *all civil power is ultimately derived from the people*; and their adverſaries, in England and elſewhere, inſtead of ſhewing how they abuſed and perverted that fundamental principle of all government, in the caſe in queſtion, did what diſputants, warmed with controverſy, are very apt to do; they denied the principle itſelf, and maintained that all civil power is derived from God; as if the Jewiſh theocracy had been eſtabliſhed throughout the whole world."—And, * "The hiſtory of this controverſy, about the doctrine of paſſive obedience and non-reſiſtance, affords a ſtriking example of the danger of having recourſe to falſe prin-

child, a religious man or a ſubject to defend himſelf againſt his parent, ſuperior, or ſovereign, if it be neceſſary, even by killing the aggreſſor; unleſs by killing him very great miſchiefs indeed ſhould happen, as wars, &c." To Engliſhmen, who ſometimes ſoften their verdict by finding *a ſe defendendo*, theſe principles may not ſeem more outrageous, than Dr. Prieſtley's own doctrines. "If it be aſked, how far a people may lawfully go, in puniſhing their chief magiſtrates, I anſwer, that if the enormity of the offence (which is of the ſame extent as the injury done to the public) be conſidered, any puniſhment is juſtifiable, that a man can incur in human ſociety." *Eſſays on the Firſt Principles of Government*, p. 36.

* Prieſtley, ibid. p. 29.

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ciples in controverſy. They may ſerve a particular turn, but, in other caſes, may be capable of the moſt dangerous application; whereas univerſal truth will, in all poſſible caſes, have the beſt conſequences, and be ever favourable to the true intereſts of mankind."

CHAP.

CHAP. VII.

OF THE LEGISLATIVE POWER.

IT is ſingular, that in the variety of ancient and modern authors, who ſpeak familiarly of the conſtitution, I ſcarcely find one, that attempts to define it; and yet I think it the firſt duty of every writer to define, at leaſt according to his own conceptions, that, which he undertakes to diſcuſs *.

Definition of the conſtitution.

By the conſtitution of England, I mean thoſe immediate emanations from the firſt principles of civil government, which the community have adopted as general rules for carrying into action that right or power of ſovereignty, which unalienably reſides with them, and which conſequently form the immediate baſis or ground, upon which all the laws of the community are founded. The tranſcendent force of the reaſons for theſe

* "By *conſtitution* we mean, whenever we ſpeak with propriety and exactneſs, that aſſemblage of laws, inſtitutions, and cuſtoms, derived from certain fixed principles of reaſon, directed to certain fixed objects of public good, that compoſe the general ſyſtem, according to which the community hath agreed to be governed." *Diſſertation upon Parties*, Letter x. p. 108, printed 1739.

rules has acquired from the community an univerſal and unexceptionable admiſſion of them, which has ſuperſeded the neceſſity of expreſſing them in a given form of words, like particular laws. They are not like thoſe metaphyſical or mathematical rules, which ſerve to direct and regulate the practice; but they are themſelves active and practical rules, which can never ceaſe to operate their effect upon the government, whilſt the government ſubſiſts; they have a political buoyancy in the ſtate, and like a cork in the waves, which may by commotion of the element, be loſt for a time from the ſight, but in the calm muſt neceſſarily reſume its viſible ſtation on the ſurface.

Inſtances of the conſtitution always returning to its level.

* "And, indeed, we may obſerve the remarkable manner, in which it has been maintained in the midſt of ſuch general commotions, as ſeemed unavoidably to prepare its deſtruction. It roſe again, we ſee, after the wars between Henry the Third and his barons; after the uſurpation of Henry the Fourth; and after the long and bloody contentions between the houſes of York and Lancaſter; nay, though totally deſtroyed in appearance,

* De Lolme on the Conſtitution of England, b. ii. c. xviii.

after

after the fall of Charles the Firſt; and, though the greateſt efforts had been made to eſtabliſh another form of government in its ſtead, yet, no ſooner was Charles the Second called over, than the conſtitution was re-eſtabliſhed upon all its ancient foundations."

The ſtate of compulſive force, uſurpation, or tyranny, is a temporary ſubverſion of the government, as a tempeſtuous commotion of the ſea is a temporary derangement or violation of the natural laws of ſpecific gravity, by which the cork would for ever remain afloat upon the water. * "As uſurpation," ſays Mr. Locke, "is the exerciſe of power, which another hath a right to, ſo tyranny is the exerciſe of power beyond right, which no body can have a right to." And he ſays elſewhere, † "No polities can be founded on any thing, but the conſent of the people."

Difference of uſurpation and tyranny.

Before I enter immediately upon the particular nature of our conſtitution, it will not be improper to ſubmit to my readers what this ſolid and perſpicuous philoſopher ſays of the general forms of a common-wealth.— ‡ "The majority having, as has been ſhew-

* Locke of Civil Government, c. xviii.
† Ibid. c. xvi. ‡ Ibid. c. xvi.

Various ſorts of government.

ed, upon man's firſt uniting into ſociety, the whole power of the community naturally in them, may employ all that power in making laws for the community from time to time, and executing thoſe laws by officers of their own appointing, and then the form of the government is a perfect *democracy*; or elſe, may put the power of making laws into the hands of a few ſelect men, and their heirs or ſucceſſors, and then it is an *oligarchy*; or elſe into the hands of one man, and then it is a *monarchy*; if to him and his heirs, it is an *hereditary monarchy*; if to him only for life, but upon his death the power only of nominating a ſucceſſor to return to them, an *elective monarchy:* and ſo accordingly of theſe the community may make compounded and mixed forms of government, as they think good. And if the legiſlative power be at firſt given by the majority to one or more perſons only for their lives, or any limited time, and then the ſupreme power to revert to them again; when it is ſo reverted, the community may diſpoſe of it again anew, into what hands they pleaſe, and ſo conſtitute a new form of government. For the form of government depending upon the placing the ſupreme power, which is the *legiſlative*, it being impoſſible to conceive, that

that an inferior power ſhould preſcribe to a ſuperior, or any, but the ſupreme, make laws, according as the power of making laws is placed, ſuch is the form of the commonwealth."

Legiſlative power.

The ſupremacy, or ſovereignty of all political power, is the legiſlative power in a ſtate; and *the firſt and fundamental poſitive law of all commonwealths, is the eſtabliſhing of the legiſlative power.* This, in fact, is the act of the community's veſting their own right or power in their delegates or truſtees: and the Engliſh community had certainly the ſame right, as every other community, upon uniting in ſociety, to make this delegation, or create this truſt in whatever manner they choſe; in other words, they were perfectly free to adopt a democratical, an ariſtocratical, or an hereditary, or an elective monarchical form of government. This was, as I have before proved, a freedom given by God to each community; *ſingulæ ſpecies regiminis ſunt de jure gentium*; but the choice being once made, or theſe delegates and truſtees having been once nominated and appointed, the ſubmiſſion of the people to them is *jure divino.* * "This legiſlative is not only the ſupreme

* Locke, ubi ſupra.

power of the commonwealth, but ſacred and unalterable in the hands, where the community have once placed it; nor can any edict of any body elſe, in what form ſoever conceived, or by what power ſoever backed, have the force and obligation of a law, which has not its ſanction from that legiſlative, which the public has choſen and appointed; and ſo, in a conſtituted commonwealth, there can be but one ſupreme power, which is the legiſlative, to which all the reſt are and muſt be ſubordinate."

This nation or community, have for many centuries choſen, and the majority, at this hour continue to chuſe a form of government partaking of the democratical, ariſtocratical, and monarchical; for * " theſe three ſpecies of government have all of them their ſeveral perfections and imperfections: democracies are uſually the beſt calculated to direct the end of a law; ariſtocracies to invent the means, by which that end ſhall be obtained; and monarchies to carry thoſe means into execution; and the ancients, as was obſerved, had, in general, no idea of any other permanent form of government, but theſe three; for though Cicero †

* Blakiſt. Introd. to his Comm. p. 50, in the quarto edition.

† In his Fragments de Rep. c. ii.

declares

declares himſelf of opinion, "*eſſe optimè conſtitutam rempublicam, quæ ex tribus generibus illis, regali, optimo, et populari ſit modicè confuſa*;" yet Tacitus treats this notion of a mixed government, formed out of them all, and partaking of the advantages of each, as a viſionary whim, and one, that if effected could never be laſting or ſecure *.

The ideas of the ancients concerning a mixed government.

"But, happily for us of this iſland, the Britiſh conſtitution has long remained, and I truſt will long continue, a ſtanding exception to the truth of this obſervation. For, as with us the executive power of the laws is lodged in a ſingle perſon, they have all the advantages of ſtrength and diſpatch, that are to be found in the moſt abſolute monarchy; and, as the legiſlature of the kingdom is entruſted to three diſtinct powers entirely independent of each other; firſt, the king; ſecondly, the lords ſpiritual and temporal, which is an ariſtocratical aſſembly of perſons ſelected for their piety, their birth, their wiſdom, their valour, or their property; and, thirdly, the houſe of commons, freely choſen by the people, from among themſelves, which

Exemplified in our own.

* Cunctas nationes et urbes, populus, aut primores, aut ſinguli regunt: delecta ex his et conſtituta reipublicæ forma laudari faciliùs, quam evenire; vel, ſi evenit haud diuturna eſſe poteſt. Ann. l. 4.

makes it a kind of democracy; as this aggregate body, actuated by different ſprings, and attentive to different intereſts, compoſes the Britiſh parliament, and has the ſupreme diſpoſal of every thing, there can no inconvenience be attempted by either of the three branches, but will be withſtood by one of the other two; each branch being armed with a negative power, ſufficient to repel any innovation, which it ſhall think inexpedient or dangerous. Here then is lodged the ſovereignty of the Britiſh conſtitution; and lodged as beneficially as is poſſible for ſociety."

It is not only allowed by our own authors, which is very natural, but alſo by all foreign writers, who have treated upon the conſtitution and laws of England, that the mixed form of our government gives it a decided preference over every other government ancient or modern. The firſt part then of our conſtitution, which comes under my conſideration, is the inveſtiture or *depoſit of the ſupreme legiſlative power*, with the fiduciary delegates of the community; and when I do this, I recede in no degree from the principles I have already laid down; nor am I conſcious or apprehenſive, that they *tend to the utter ſubverſion, not only of all government, in all modes, and to all ſtable ſecurities to rational*

tional freedom, but to all the rules and principles of morality itſelf. On the contrary, from them alone can I trace a principle of coercion and coaction over the multitude. But before I enter minutely upon each ſeparate branch of the legiſlature, it will be requiſite to form a juſt and preciſe idea of the nature and general effects of this commiſſion, or gift of power to them all jointly: we have, I hope, proved, that it was done by the conſent and approbation of the community; and I have not as yet met with any writer, who has attempted to prove, that the hereditary peers of this realm, or a given number of elected commoners poſſeſs any particle of legiſlative authority, independently of the community. Many indeed have, by deducing the royal power and prerogative immediately from Almighty God, attempted to place the king above and wholly independent of the community. The proper place for examining this doctrine will be, in conſidering the rights, powers, and prerogatives of the king: I ſhall, however, for the preſent preſume, what I hope hereafter to prove, that as the law makes and qualifies the king, and the nation or community makes the laws, ſo the king cannot be wholly above nor independent of the laws or the community.

The foregoing principles produce coercion over the people.

When

When I ſay, that all the political power, which is poſſeſſed by the king, lords, and commons in this nation, is the free gift of the people, in the ſame breath I admit, that by this gift the conſtitution and government of this country are brought to the higheſt poſſible degree of perfection, of which any human inſtitution of this nature is capable. Superficially, indeed, muſt they view this inveſtiture of power, who fancy, becauſe the power is a truſt, that *magiſtrates therefore have duties, but no rights.* The perfection of a gift depends not only upon the excellency of the boon, but alſo upon the efficacy of the means, by which the receiver is enabled to defend, preſerve, and improve the enjoyment of it. I have before ſaid, that the community can only act for its welfare and preſervation; and it is truly admirable to contemplate the wiſdom and ſagacity, with which, by our conſtitution, each branch of the legiſlature is enabled to defend and preſerve the rights and powers, which have been reſpectively delegated to them. The object of this delegation of power was, to render the diſſolution of the government as difficult as poſſible; and the perfection of its execution is that ſtupendous equipoiſe of power, that renders it almoſt morally impoſſible, that one branch of the

The delegation of power gives rights, as well as duties;

and prevents the diſſolution of government.

the legiſlature ſhould out-balance another. Thus do we obſerve, from experience, that whatever be their derangement in a temporary convulſion of the ſtate, they are ſure to return, with peace and order, to their ancient level. And as in nature, the ſerene ſunſhine, which immediately ſucceeds a ſtorm, adds peculiar luſtre to the objects, which it irradiates, ſo moſt diſturbances in our ſtate have terminated in adding light and vigor to our conſtitutional rights and liberties. This is the halcyon view of our political conſtitution, which Dr. Kippis repreſents immediately after the revolution of 1688: * "To be favoured with a form of government, of which liberty is the baſis, is the greateſt of all temporal bleſſings; and the nations, on which ſo noble a gift has been beſtowed, appear with peculiar glory in the hiſtory of the world. It has been the happineſs of Britain to poſſeſs this benefit in a high degree of perfection. The ſyſtem of our government is not ſingly a democracy, an ariſtocracy, or a monarchy; but an excellent compoſition of the three. It adopts the advantages of theſe ſeveral ſchemes, and rejects their inconveniencies; it aſſumes the equality of a de-

Pleaſing view of our conſtitution, by Dr. Kippis.

* Dr. Kippis's Sermon preached at the Old Jury on the 4th of Nov. 1788, p. 24, 25.

mocracy,

mocracy, without its confuſion; the wiſdom and moderation of an ariſtocracy, in ſome reſpects, without its ſeverity in others; and the vigour of a monarchy without its tyranny; and it admirably provides for the diſtinct exerciſe of the judicial authority. Hence, it preſents a plan of power, which produces more true freedom, than perhaps has yet been enjoyed by any community, in any period."

The rights, which attended this donation or inveſtiture of power, I ſhall endeavour more particularly to illuſtrate, when I ſeparately conſider each branch of the legiſlature. I ſhall firſt however, beg leave to premiſe ſome leading obſervations, concerning the revolution and its principles and effects. As a member of the *contented* majority of this community or nation, I muſt from henceforth view and conſider the ſupreme legiſlative power completely veſted in our parliament; and in them am I to ſeek the unalienable rights of the people, whom they completely repreſent; for in them the ſovereignty of power to alter, change, amend, and improve the conſtitution and government of the community indefeaſibly reſides. Whatever mental objections I may conceive againſt the truth of this propoſition, as a member

The right of the legiſlature to alter the government.

member of the community I am bounden, under the penalties of high treaſon (and the community have a right to bind me) to keep my opinion to myſelf: for * "if any perſon ſhall, by writing or printing, maintain and affirm, that the kings or queens of this realm, with and by the authority of parliament, are not able to make laws and ſtatutes of ſufficient validity to limit the crown, and the deſcent, inheritance, and government thereof, every ſuch perſon ſhall be guilty of high treaſon." This act is as coercive upon me at this moment, as it was binding upon all my predeceſſors, who were living at the time of its paſſing into a law. The act neither gives nor declares any new rights, but emphatically imports ſuch a reverential and awful conviction, that the ſupreme or ſovereign right and power of forming and changing our government, ever did and ever muſt reſide in the people, that makes it treaſonable (not to think) but to expreſs a thought to the contrary.

High treaſon to deny it.

* 4th Ann, c. viii. and 6th Ann, c. vii.

CHAP.

CHAP. VIII.

OF THE REVOLUTION, AND OF ITS PRINCIPLES AND EFFECTS.

THE avowal of the principles, which I have already endeavoured to eſtabliſh, induces the mortifying neceſſity of arguing upon the revolution, in a manner different from that great perſonage, whoſe talents and virtues are the ornament and glory of the preſent age: * "They threw a politic well wrought veil over every circumſtance tending to weaken the rights, which, in the meliorated order of ſucceſſion, they meant to perpetuate, or which might furniſh a precedent for any future departure from what they had then ſettled for ever." No wonder that the malcontents of the preſent day, when not permitted to attribute effects to their real cauſes, ſhould fly into any extravagancy, which can be propoſed to them. Unlimited is the miſchief of not avowing, or of denying or diſſembling true principles. I neither ſee the policy, nor admit of the ne-

Miſchief of denying or diſſembling true principles.

* Mr. Burke's Reflections on the Revolution in France, p. 25.

ceſſity of putting extreme caſes to elucidate the truth of our conſtitutional doctrine; but, though I make the largeſt allowances for the indelicacy, the indiſcretion, the imprudence, the inſolence, or the malice of this practice, ſtill do I ſee leſs evil in the conſequences, than in one attempt to deny or diſſemble the truth of the firſt principles of civil government.

Acts of parliament the only acts of the people of England.

Since this nation or community has depoſed its ſovereign power with parliamentary deputies or repreſentatives, there can be no act of parliament, which is not the act of the people of England; nor can there be an act of the people of England, which is not an act of the parliament of England; whatever, therefore, may be ſaid of the one, may alſo with ſtrictneſs be ſaid of the other. If therefore this ſenſe and meaning be properly attended to, little offence, or even diſpleaſure, can be taken at moſt of the propoſitions, that have been lately hazarded by the different leaders or fomenters of the diſcontented minority. Thus, if we come truly and impartially to conſider the three rights, which Dr. Price reminded his audience, at the Old Jewry, were gained by the revolution, we ſhall find nothing falſe in his politicotheologic aſſertion, but that *we gained them*

The revolution gave no new rights to the community.

them by the revolution; for the revolution gave no rights to the community, which the community did not before poſſeſs; but, by affording an opportunity of calling theſe rights into action, like all other practical examples, it threw light upon the principles, from which the rights themſelves originated.

How Dr. Price's propoſitions are to be underſtood.

The firſt of theſe is, the *right to liberty of conſcience in religious matters*. I have before ſaid, and, I hope, to the conviction of my readers, that this is a right poſſeſſed by every individual in ſuch a tranſcendent and indefeaſible manner, that he eſſentially holds it independently of the community. The ſecond is *the right of reſiſting power when abuſed*. Having before ſhewn, I hope alſo to the conviction of my readers, that all political power given or delegated by the community, is a truſt, and conſequently limited within certain bounds, it is evident and clear, that the community cannot be bound to ſubmit to any exceſs of power, which they themſelves have not aſſented to. This aſſent is formally given by every one, who continues to remain a member of that community, which delegated the power to the parliament; and it is this aſſent, that conſtitutes the original compact between the governors and governed. The actual limitation of any political

political power, is a metaphyſical demonſtration that it originated from, and depends upon a ſuperior, who formed the limits. The tranſgreſſion of theſe limits is a violation of the truſt; it is either uſurpation or tyranny, and conſequently a direct breach of the original compact on the part of the governors; the governed ceaſe to be bound to a power not aſſented to by them; there ariſes then a diſſolution of the government, and the people have a right to reſiſt the exactions of this aſſumed or uſurped authority.

The third of theſe rights, which Dr. Price repreſents as gained or obtained by the revolution is, * *The right to chuſe our own governors, to caſhier them for miſconduct, and to frame a government for ourſelves.* The general ſubſtance of theſe propoſitions is certainly true; but the method, which this zealous apoſtle of liberty has adopted to convey the truth to his

* Dr. Price, in the ſame ſermon, p. 35. "I would further direct you to remember, that though the revolution was a great work, it was by no means a perfect work; and that all was not then gained, which was neceſſary to put the kingdom in the ſecure and complete poſſeſſion of the bleſſings of liberty. In particular, you ſhould recollect, that the toleration then obtained was imperfect; it included only thoſe, who could declare their faith in the doctrinal articles of the church of England."

congregation, I muſt own, is rather of an inſidious nature, and without judging very raſhly, we may be allowed to think it calculated to inſpire his auditors with a diſcontented contempt for their governors, and excite them to an attempt to alter or ſubvert the preſent ſyſtem and form of government. Whereas, ſince, as Milton ſays, *the inſtitution of magiſtracy is jure divino*, I think I need not uſe argument to prove, that it is emphatically the duty of the miniſters of God, to enforce from his ſacred tribunal, the obligation of ſubmitting to their authority. And, indeed, it muſt in juſtice be allowed, that this political evangeliſt does not leave his pulpit, without ſhewing to his congregation, that he is fully aware of this firſt duty of his ſtation.

Deference and homage due to civil magiſtrates.

* " There is undoubtedly a particular deference and homage due to civil magiſtrates, on account of their ſtations and offices; nor can that man be either truly wiſe, or truly virtuous, who deſpiſes governments, and wantonly *ſpeaks evil of his rulers*; or who does not, by all the means in his power, endeavour to ſtrengthen their hands, and to give weight to their exertions in the diſcharge of their duty. *Fear God*, ſays St. Peter. *Love the brotherhood. Honour all men. Honour the*

* Dr. Price's Sermon, p. 27.

king. You muſt needs, ſays St. Paul, *be ſubject to rulers, not only for wrath* (that is, from the fear of ſuffering the penalties annexed to the breach of the laws), *but for conſcience ſake. For rulers are miniſters of God,* and *revengers for executing wrath on all that do evil.*" Were the whole tenor of Doctor Price's diſcourſe conformable with this part of it, no other than the moſt deſirable effects could have been produced by it; and in the encreaſing duty and ſubmiſſion of his flock to the powers placed over them, would the fruits of their loyal paſtor's addreſs be diſcovered.

Mr. Locke, in the preface to his Treatiſe upon Civil Government, ſays; * "he allows its juſt weight to this reflection, that there cannot be done a greater miſchief to prince and people, than the propagating wrong notions concerning government, that ſo at laſt, all times might not have reaſon to complain of the drum eccleſiaſtic." Now, if the congregation aſſembled at the Old Jewry underſtood and felt, as well as their paſtor, that by the words, *our own* and *ourſelves*, were meant and intended the whole community, completely repreſented by the king, lords, and commons, the firſt and third part of this

* P. 105, vol. ii. of the folio edition.

laſt aſſertion, viz. *the right to chuſe our own governors*, and *to frame a government for ourſelves*, are certainly true, and it would be treaſonable to deny them openly. The ſecond part of the aſſertion cannot be ſaid to be falſe, though, from the improbability of its taking effect, it becomes childiſhly abſurd. It certainly is within phyſical poſſibility, though without moral probability, that a king of England ſhould give the royal aſſent to an act of parliament for caſhiering himſelf for miſconduct; for in the preſent conſtitution of our government, there can be no act of the people, which is not an act of parliament; nor any act of the parliament, which is not the act of the people. Now, although in this proper *true* political ſenſe the doctrine of Dr. Price be ſtrictly true, yet, from the manner, in which the truth appears to have been conveyed, or repreſented to his congregation, I cannot help concluding, that moſt of them came from the Old Jewry fully ſatisfied (as indeed they probably went thither), that theſe boaſted rights were poſſeſſed, and might at all times be exerciſed by thoſe particularly, who diſſented from our eccleſiaſtical, and were diſcontented with our preſent civil eſtabliſhment. It was rather inſidious, to ſoothe them with this flattering diſplay of rights, and not

The true political ſenſe of Dr. Price's propoſitions.

Rights of the community repreſented inſidiouſly, as the rights of every individual.

at

at the ſame time inform them, that they never could be exerciſed, but by the act of the majority of that community, of which they were avowedly a very decided minority; and that they were moreover amenable, collectively and individually, to the full rigour of the laws, for reſiſting or oppoſing in any manner the acts of the majority; any idea, therefore, of a perſonal enjoyment of theſe rights, in conſequence of our own judgments, was deluſive and miſchievous in the extreme; and the idea of caſhiering our governors for miſconduct, which in moſt minds would implant the previous idea of a right of perſonal condemnation, ſuperadds to the deluſion and miſchief a ſenſe of indelicacy, little congenial with the deference and reſpect, which our conſtitution enjoins every one to pay to the ſupreme governor of the ſtate. I perhaps underſtand theſe three aſſertions of Dr. Price differently from the generality of his congregation; but, probably, not differently, from himſelf; for he expreſsly and truly ſays, * "Were it not true, that liberty of conſcience is a ſacred right; that power abuſed juſtifies reſiſtance; and that civil authority is a delegation from the people, the revolution

* Dr. Price's Sermon, p. 34.

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would have been, not an *aſſertion*, but an *invaſion* of rights; not a *revolution*, but a *rebellion*."

There is one more paſſage in this much canvaſſed ſermon, which has given the higheſt offence to Mr. Burke. † "All things in this fulminating bull are not of ſo innoxious a tendency. His doctrines affect our conſtitution in the moſt vital parts. He tells the revolution ſociety in this political ſermon, that his majeſty is almoſt the only lawful king in the world, becauſe the only one, who owes his crown to the choice of his people. This doctrine, (he ſays), affirms a moſt unfounded, dangerous, illegal, and unconſtitutional poſition." I think it clear, that Dr. Price, by the words, *owes his crown to the choice of his people*, did not mean, that he owed his high office to any form of popular election, as Mr. Burke inſinuates, which would have been notoriouſly falſe; but that our ſovereign owes his crown and ſtation to the free aſſent of the people, which is the efficient cauſe of every free conſtitution; and this I take to be true, ſound, and genuine revolution doctrine; and as ſuch was it expreſsly delivered by Mr. Locke, immediately after the revolution had

The true cauſe of the king's owing his crown to the choice of his people.

† Reflections on the Revolution in France, p. 16.

taken

taken effect. * "These which remain, I hope, are sufficient to establish the throne of our great restorer, our present King William; to make good his title in the consent of the people; which being the only one of all lawful governments, he has more fully and clearly, than any prince in Christendom; and to justify to the world the people of England, whose love of their just and natural rights, with their resolution to preserve them, saved the nation." In this sense, I profess to see little or no difference between the compliment paid to King William by Mr. Locke, a very great philosopher and an old whig, and that paid to King George the Third by Dr. Price, who by many was esteemed a very great philosopher and a modern whig. And it is very certain, that by far the greatest part of the people of England do now believe and maintain, that both his present majesty and the late king William became entitled to the sovereignty of this community upon those principles, which, from the days of King William have been called *revolution principles*; not that they were formed, given, or even established by the revolution, but that the revolution was effected by them; so that the

* Locke's Preface to his Treatise on Civil Government.

denomination has been borrowed from the effect, and not from the origin or cauſe. No ſovereign in fact from King Egbert to his preſent majeſty, has ever owed his crown to any other, than theſe identical principles.

It would be very unwarrantable in me to ſubmit to this ſentiment, * "that *it has been our misfortune, and not the glory of this age, that every thing is to be diſcuſſed.* Wherever miſrepreſentation of truth has exiſted, and that miſrepreſentation has been attended with pernicious conſequences, diſcuſſion alone can cure the evil. I openly avow this to be the intent of my making this publication; and with this view am I induced to make the moſt public and unequivocal profeſſion of thoſe principles, which have engendered, nurtured, and maturated our conſtitution; and which, if ſtrictly adhered to, muſt ever preſerve it in full vigour, and ſo perpetuate it to the lateſt poſterity. I am very far from wiſhing to draw a veil over the principles, which juſtified the alterations in the conſtitution of our government at the revolution; for if that great event had never taken place, and any circumſtance had provoked the diſcuſſion of the principles, upon which it was formed, I ſhould

Diſcuſſion favourable to the cauſe of truth.

* Burke, ubi ſupra.

have

have explained and profeſſed them in the ſame manner, in which I now do.

As well might it be denied, that a revolution in this kingdom exiſted in the year 1688, as that very eſſential alterations were at that time introduced into the conſtitution. It is immaterial to the ſubject under our preſent conſideration, whether theſe alterations were prudent to be made, or whether they could be, or were, recommended by each individual of the community. The eſſential alterations were two: the firſt was, the alteration in the ſucceſſion of the crown; the ſecond was the alteration in the tenure of the crown. As for all the other rights, liberties, and privileges, which are commonly ſaid to have been acquired, ſecured, or confirmed unto us at that period by the bill of rights, or otherwiſe, it appears evident, from the reflections already offered, that nothing more was in fact gained by the people at the revolution, than an expreſs acknowledgment or recognition by the ſovereign, that the people were entitled unto, and might for ever enjoy thoſe rights, to which without any ſuch acknowledgment or recognition, they ever had an indefeaſible title, not coeval and co-equal with, but prior to, the ſovereign's title to the crown; for the rights of the people preceded

Alterations in the conſtitution effected by the revolution.

The rights of the people prior to thoſe of the ſovereign.

ceded the original compact, upon which ſociety was formed; and the rights of the ſovereign were granted by the community for their better preſervation.

Few writers have fairly repreſented the revolution.

Few writers appear to me to have treated the revolution of 1688 with fair unbiaſſed candor. Moſt of them ſeem to have been checked by a delicate timidity from ſpeaking the whole truth, or avowing the real ſpirit of the revolution; ſome of them appear to have been impelled by a reſtleſs diſcontented diſpoſition, to go far beyond the real ſpirit of the revolution, by facilitating the means, and inventing neceſſities for a repetition of the ſcene. None of them appear ever to have ſufficiently diſtinguiſhed between the facts, which occaſioned, and the principles, which juſtified the revolution.

As to the principles, I hope I have evinced my readers, that they are prior to the conſtitution itſelf, and fully adequate to every purpoſe of preſerving and improving it, as the exigencies of circumſtances and the wiſhes of the community may require. The facts, which gave riſe to the revolution were ſuch, as in all human probability never can again recur in that combination, as to occaſion another ſuch revolution upon the ſtrength of precedent. I ſhall therefore conſider a repe-

The facts which occaſioned the revolution never again likely to recur.

repetition of ſuch an event, as amongſt the moral impoſſibilities. In ſpeaking with freedom of this great event, I mean not to diſpleaſe nor offend thoſe, who have viewed and treated it in a light and manner very different from that, in which I ſhall take the liberty of repreſenting it.

* "The conſtituent parts of a ſtate are obliged to hold their public faith with each other, and with all thoſe, who derive any ſerious intereſt under their engagements, as much as the whole ſtate is bound to keep its faith with ſeparate communities." And this ſame great man, ſpeaking of the common law and the ſtatute law, ſays, † "both theſe deſcriptions of law are of the ſame force, and are derived from an equal authority, emanating from the common agreement and original compact of the ſtate, *communi ſponſione reipublicæ*, and ſuch as are equally binding on king and people too, as long as the terms are obſerved, and they continue the ſame body politic."

Upon the ſame principles, upon which the revolution was effected, very important alterations have been formerly made in the

* Mr. Burke's Reflections on the Revolution of France, p. 28.

† Ibidem.

con-

The reformation an alteration in the conſtitution before the revolution.

conſtitution and government of this kingdom, before that event took place. The moſt material of theſe alterations was the reformation, or change of the national religion. For upwards of 900 years, the church eſtabliſhment of this nation was of the Roman catholic perſuaſion or doctrine; and during that period, it as certainly made a part of our conſtitution, as the proteſtant religion makes a part of our conſtitution at this day, and as it did alſo in the year 1688; for, as I have endeavoured to prove before, the community muſt ever retain an indefeaſible right of making a civil eſtabliſhment of that religion, which the majority ſhall have thought it their duty to adopt; for this duty lies upon each individual independently of the community. King James the Second had adopted the Roman catholic religion, whilſt he was duke of York and the preſumptive heir to the crown: the apprehenſions of the nation were upon this account much alarmed, leſt, if the crown ſhould devolve upon a perſon of that perſuaſion, ſome alteration or change would be attempted, and, perhaps effected in their religious eſtabliſhment, which they eſteemed their firſt and deareſt conſtitutional right and liberty, as being the immediate effect of their own free

Apprehenſions of the nation for their religious eſtabliſhent under a Roman catholic prince.

election. Upon this account, they brought into the Houſe of Commons * "the famous bill of excluſion, which raiſed ſuch a ferment in the latter end of the reign of king Charles the Second. It is well known, that the purport of this bill was to have ſet aſide the king's brother, and preſumptive heir, the duke of York, from the ſucceſſion, on the ſcore of his being a papiſt; that it paſſed the houſe of commons, but was rejected by the lords; the king having alſo declared before hand, that he never would be brought to conſent to it." From this tranſaction we clearly ſee, that our anceſtors were decidedly of opinion, that the community, by the act of their repreſentatives, had a right to alter and change the conſtitution and government, as they ſhould think proper; for the lords did not reject the bill, becauſe they wanted the power of concurring in it, but becauſe they thought it inexpedient, that it ſhould then paſs into a law. Hence alſo may we learn a moſt *practical leſſon* upon the ſupereminent excellency of our conſtitution, which, though it has inveſted the whole legiſlative body with ſuch a tranſcendency of power, that it is now proverbially called *omnipotent*, yet has it ſo judi-

The bill of excluſion thrown out of the Lords.

* Blackſtone's Commentary, b. i. c. 3.

ciouſly

ciouſly counterbalanced the rights, powers, and intereſts of each component part of that body, that it is never preſumed probable, that any act ſhould paſs the three branches of the legiſlature, which does not appear evidently for the advantage of the community, whom they collectively repreſent. * "Like three diſtinct powers in mechanics, they jointly impel the machine of government in a direction, different from what either, acting by itſelf, would have done; but at the ſame time, in a direction partaking of each, and formed out of all; a direction, which conſtitutes the true line of the liberty and happineſs of the community." However, as the bill took no effect, no alteration nor change was then introduced into the old conſtitutional rule of ſucceſſion, and king James the Second ſucceeded to the throne of his anceſtors by the common law of the land.

Safety in the three diſtinct powers of the legiſlature.

It would be uſeleſs, and, perhaps, very impolitic to attempt (although it might be now done impartially) an hiſtorical examination of the acts, by which king James the Second provoked the community to declare, that he had *abdicated* the crown, as they declared in England, or that he had *forfeited* it,

* Blackſtone's Commentary, b. i. c. 2.

as

as they declared in Scotland. Suffice it to ſay, that ſuch was the ſenſe of the majority of the community, by which the minority was certainly concluded. * "For, in a full aſſembly of the Lords and Commons met in convention, upon the ſuppoſition of this vacancy, both houſes came to this reſolution, *That king James the Second, having endeavoured to ſubvert the conſtitution of the kingdom, by breaking the original contract between king and people, and, by the advice of jeſuits and other wicked perſons, having violated the fundamental laws; and having withdrawn himſelf out of this kingdom, has abdicated the government, and that the throne is thereby vacant.*" This learned commentator upon our laws continues thus: † "The facts themſelves thus appealed to, the king's endeavours to ſubvert the conſtitution by breaking the original contract, his violation of the fundamental laws, and his withdrawing himſelf out of the kingdom, were evident and notorious; and the conſequences drawn from theſe facts, namely, that they amounted to an abdication of the

The majority for the Abdication.

* Blackſtone's Commentary, b. i. c. 3.

† I am happy in quoting the authority of Mr. J. Blackſtone, who delivered theſe commentaries in the form of lectures, as Vinerian profeſſor in the univerſity of Oxford.

government,

government, which abdication did not affect only the perſon of the king himſelf, but alſo all his heirs, and rendered the throne abſolutely and completely vacant, it belonged to our anceſtors to determine. For, whenever a queſtion ariſes between the ſociety at large, and any magiſtrate veſted with powers originally delegated by that ſociety, it muſt be decided by the voice of the ſociety itſelf; there is not upon earth any other tribunal to reſort to. And that theſe conſequences were fairly deduced from theſe facts, our anceſtors have fully determined in a full parliamentary convention, repreſenting the whole ſociety. I, therefore, (continues he) rather chuſe to conſider this great political meaſure, upon the ſolid footing of authority, than to reaſon in its favor from its juſtice, moderation, and experience; becauſe that might imply a right of diſſenting or revolting from it, in caſe we ſhould think it to have been unjuſt, oppreſſive, or inexpedient. Whereas our anceſtors having moſt *indiſputably a competent juriſdiction to decide* this great and important queſtion, and having in fact decided it, it is now become our duty, at this diſtance of time, to acquieſce in their determination, being born under that eſtabliſhment, which was built upon this foundation, and obliged

obliged by every tie, religious as well as civil, to maintain it." When this learned commentator declines *to conſider the juſtice, moderation, and expedience of the revolution*, it is clearly waving the examination of the facts, which occaſioned it; and when he admits, that *our anceſtors had indiſputably a competent juriſdiction to decide this great and important queſtion*, it is an unequivocal avowal of the pre-exiſtence of thoſe principles, upon which it was effected; for if thoſe principles had originated out of the revolution, they could not be ſaid to have juſtified the revolution of 1688, although they would juſtify a future revolution, under all ſimilar circumſtances, which is ſcarcely to be preſumed within the poſſibility of human occurences.

Judge Blackſtone waves the examination of the facts which occaſioned the revolution;

and avows the principles upon which it was effected.

More than a whole century has now elapſed, ſince this memorable event was brought about by the majority of the nation, and that concludes the whole; and whatever feeble efforts have during that period of time, been attempted by the jacobite party, to counteract and ſubvert the eſtabliſhment made at the revolution, it can never be pretended, that that party made more, than a very inſignificant minority of the community, who conſequently were concluded by the acts of the majority, and conſtitution-

The jacobites, as the minority, concluded by the acts of the majority.

ally bounden to abſtain from ſuch attempts. It is but juſtice, however, to mark the difference between ſuch individuals, as, following the fortunes of their abdicated ſovereign, quitted and renounced the community, (which they had a right to do) and thoſe, who continuing to enjoy the protection and benefit of the community, rebelled againſt the ſtate, by attempting to force and ſubject the avowed ſenſe and open acts of the majority to the pretended rights and encroachments of an uſurping minority. By the articles of Limerick, the right of transferring their allegiance to a foreign power was expreſsly ſtipulated for and granted to thoſe, who ſhould chuſe on this occaſion to quit the community.

The revolution as much the act of thoſe who approve of as of thoſe who planned it.

The revolution is to be looked upon as much (if not more) the act of thoſe, who have ever ſince approved of it by the adoption and ſupport of the eſtabliſhment, that was effected by it, than of thoſe, who firſt planned and brought it to bear. And I have too *reſpectable* a deference for the Engliſh nation, to charge them with having, as jurymen, brought in a falſe verdict, by finding againſt the matter of fact, which occaſioned the revolution, or with having, as judges, pronounced againſt the point of law, by condemning

demning the principles, upon which it was effected. I ſhould not hold myſelf juſtifiable in drawing a veil over the one or over the other. I moſt ſtrongly, therefore, reprobate the idea of the rights of the people of England being weakened by any of the circumſtances * that attended the revolution, or that any poſſible act of the legiſlature could render the principles, upon which the revolution was effected, leſs operative in future than they had before been.

Our anceſtors were anxious to deliver down their reaſons for effecting the revolution.

The before mentioned declaration by the national convention of the circumſtances, that on this occaſion ſummoned them to the exerciſe of their inherent and indefeaſible rights, which I call the verdict of the nation, ſo far from being calculated to ſuppreſs or diſſemble the matter of fact, appears to have been worded with the moſt cautious intention of handing down to the lateſt poſterity a full and faithful ſtatement of the facts, which induced *them* to make, and would induce poſterity to approve of and ſupport theſe alterations in the conſtitution and government of the country. They make this expoſition, or rather boaſt, of the *circumſtances, as tending to vivify and confirm, not to*

* Mr. Burke's Reflections on the Revolution in France, p. 25.

weaken the rights, which, in the meliorated order of ſucceſſion, they meant to perpetuate; and the acts, which they engrafted upon this declaration, are the ſtrongeſt evidence of our anceſtor's wiſhes to keep alive and active the principles, upon which they paſſed them. Some perſons may alſo formerly have been prepoſſeſſed of the idea, that the revolution was * "an act of neceſſity, in the ſtricteſt moral ſenſe, in which neceſſity can be taken; and that it ſhould never † furniſh a precedent for any future departure from what they had then ſettled for ever." Through fear and anxiety therefore, leſt in theſe prepoſſeſſions the genuine principles of the revolution might merge and become extinguiſhed, the nation at different times has taken the moſt effectual means to perpetuate the ſpirit and principles of the revolution to their lateſt poſterity, whom they endeavoured at the ſame time by all poſſible means to ſecure againſt the occaſions of calling them into action.

It appears from hiſtory, that during the reign of queen Anne, many complaints were made by the biſhops in particular, of the increaſe of diſſenters, and of the licentious and rebellious doctrines preached by ſeveral

* Burke, ubi ſupra.
† Ibidem.

of

of the clergy; by which they would infer, that the church of England was brought into great danger: and very ſtrong attempts were made from the pulpits and elſewhere, to inculcate into the people tory principles and doctrines, which militated directly againſt thoſe whig principles, upon which the revolution was brought about and eſtabliſhed. Theſe matters were warmly debated in the houſe of peers; * and Lord Somers took a leading part in them. Theſe perſons, as Mr. Burke obſerves, † "had many of them an active ſhare in the revolution, moſt of them had ſeen it at an age capable of reflection. The grand event and all the diſcuſſions, which led to it and followed it, were then alive in the memory and converſation of all men." The public ſteps, which were then taken by the nation, were probably ſuggeſted and recommended by Lord Somers, and they certainly were not grounded upon the idea *of our having renounced any rights at the revolution*; on the contrary, they were adopted for the expreſs and avowed purpoſes of keeping alive the genuine conſtitutional principles, upon which the right of the people to alter

Attempts to aboliſh the revolution principles, by the propagation of tory principles.

Declaration of the nation that the revolution principles were neither prejudicial to church or ſtate.

* Vid. Hiſt. and Proceedings of the Houſe of Lords, vol. ii. p. 154, & ſeq. 4 Anne.

† Appeal from the New to the Old Whigs, p. 55.

the ſucceſſion and government was exerciſed at the revolution, and upon the preſumption, that the church of England could not be brought into danger by the propagation and maintenance of thoſe principles.

The firſt of theſe ſteps was the introduction of the before mentioned clauſe into the act (4 Ann. c. viii.) *for the better ſecurity of her majeſty's perſon and government, and of the ſucceſſion to the crown of England in the proteſtant line*, which makes it high treaſon to deny to the people, by their repreſentatives in parliament, the right or power to limit, as they ſhould think proper, the deſcent, inheritance, and government of the crown. The ſecond was the royal proclamation made on the 20th Dec. 1705, in conſequence of and in order to publiſh to the nation the joint vote of both houſes of parliament, *that the church was not in danger*. And the proclamation contains her majeſty's declaration, that ſhe would proceed with the utmoſt ſeverity the law ſhould allow of, againſt the authors or ſpreaders of ſuch ſeditious and ſcandalous reports. In the ſixth year of her ſaid majeſty's reign, after the union, this clauſe of high treaſon for denying the right of parliament to new model the ſucceſſion,

was

was again enacted and extended to Scotland.

After theſe two ſolemn acts of the nation, it ſhould ſeem, that nothing was left to be done, in order to give permanency and vigor to the principles, upon which the revolution was effected. * "It rarely happens to a party to have the opportunity of a clear, authentic, recorded declaration of their political tenets upon the ſubject of a great conſtitutional event, like that of the revolution. The whigs had that opportunity, or, to ſpeak more properly, they made it. The impeachment of Dr. Sacheverel was undertaken by a whig miniſtry, and a whig houſe of commons, and carried on before a prevalent and ſteady majority of whig peers. It was carried on for the expreſs purpoſe of ſtating the true grounds and principles of the revolution, what the commons emphatically called their *foundation*. It was carried on for the purpoſe of condemning the principles, on which the revolution was firſt oppoſed, and afterwards calumniated, in order, by a juridical ſentence of the higheſt authority, to confirm and fix whig principles, as they had operated both in the reſiſtance to king James,

Sacheverel's trial inſtituted for the direct purpoſe of manifeſting the true ſpirit of the revolution.

* Appeal from the New to the Old Whigs, p. 54, 55.

and in the ſubſequent ſettlement; and to fix them in the extent, and with the limitations, with which it was meant they ſhould be underſtood by poſterity." Without going into the particulars of the trial of Doctor Sacheverel, we ſhall find ſufficient in the preamble to the articles of impeachment exhibited againſt him by the commons, to enable us to form a complete judgment upon the general intent and deſign of bringing on this trial. Such confidence and ſuch glory did our anceſtors place in theſe principles, that inſtead of drawing a veil over them, they ſeemed to have adopted, by bringing on this trial, the moſt effectual method poſſible of ſubmitting them to the ſevereſt ordeal of minute and public inveſtigation.

After reciting that the revolution had actually taken place, to the great happineſs of the realm, and that the ſaid glorious enterprize had ſince been approved by ſeveral acts of parliament, * the preamble ſets forth more

* Viz. by an act made in the firſt year of the reign of king *William* and queen *Mary*, intituled, *An act declaring the rights and liberties of the ſubject, and ſettling the ſucceſſion of the crown*; and alſo by one other act made in the ſame year, intituled, *An act for preventing vexatious ſuits againſt ſuch as acted, in order to the bringing in their majeſties, or for their ſervice*; and alſo by one other act

more particularly the happy and bleſſed conſequences of the revolution; and that, notwithſtanding, Dr. Sacheverel had, in two ſermons, which he preached and publiſhed, attempted, by a "wicked, malicious, and ſeditious intention, to undermine and ſubvert her majeſty's government, and the proteſtant ſucceſſion, as by law eſtabliſhed, to defame her majeſty's adminiſtration, to aſperſe the memory of his late majeſty, to traduce and condemn the late happy revolution, to contradict and arraign the reſolutions of both houſes of parliament, to create jealouſies and diviſions amongſt her majeſty's ſubjects, and to incite them to ſedition and rebellion." The ſolemn judgment of the houſe of peers againſt Dr. Sacheverel muſt, in my opinion, make it abſolutely unlawful for any Britiſh ſubject, in future, openly to deny or diſapprove of the revolution principles, or publicly to maintain thoſe, which are commonly called the tory principles.

The judgment againſt Dr. Sacheverel makes it unlawful to maintain publicly tory principles.

In the line of morality or policy, no action can be juſtified that is not reducible to ſome

act made in the ſame year, intituled, *An act for appropriating certain duties for paying the ſtates* general *of the united provinces their charges for his majeſty's expedition into this kingdom, and for other uſes; and the actings of the ſaid well-affected ſubjects in aid and purſuance of the ſaid enterprize.*

true

true principle; I have, therefore, endeavoured to ſhew, upon what principles the revolution was effected, and upon what principles its conſequences are ſtill cheriſhed and maintained. But as in all political diſquiſitions, this memorable event is conſtantly reſorted to by all parties, even for the moſt oppoſite purpoſes, I ſhall attempt to delineate its naked portrait, without the incumbrance or diſguiſe of the ſlighteſt drapery. The nearer we approach to truth, the more our ideas become ſimplified. Although it be true, that the act of the majority of a community muſt ever conclude and bind the whole; yet it is not to be ſuppoſed, that even the unexceptionable and univerſal aſſent or act of any ſociety of human beings, is neceſſarily free from the effects of thoſe paſſions, to ſome of which each one of the community is liable. When I ſpeak of the binding effect or coercive obligation of theſe acts, I ſpeak only of ſuch moral or indifferent acts, as each individual would, independently of the community, be at liberty to perform.

The right and obligation of individuals, and of the community, to adopt what they think the true religion.

Wherever the end is lawful, the neceſſary means to attain that end are alſo lawful. As each individual has not only the tranſcendent and indefeaſible right, but alſo the ſtricteſt moral obligation of adopting that form

form of religious worſhip, which he thinks moſt agreeable to his creator, ſo have the community collectively, both the ſame right and the ſame obligation; and whenever the majority of the community ſhall have ſo concurred in the adoption of a religion, the maintenance and preſervation of it ſtand upon the ſame principles of right and obligation. At the time of the revolution, the majority of the community did, as at this day they do, hold the free enjoyment of the proteſtant religion, as their firſt and moſt important liberty: they knew themſelves to be under a Roman catholic ſovereign; and their rooted diſlike to that religion made them look upon every imprudent exertion, as well as illegal ſtretch of the prerogative, as a direct attempt to introduce and eſtabliſh what they called *popery*, upon the deſtruction and ruin of the proteſtant religion. Whether this judgment of our anceſtors were true or juſtifiable, it matters little for me to examine; it certainly was the judgment of the majority, and, therefore, if any individuals did not chuſe to ſubmit to its effects, they had the liberty to quit the ſociety, but not to reſiſt or oppoſe the act of the majority. * "The idea,"

The diſlike and fears of popery the real immediate cauſe of the revolution.

* Black. Com. b. i. c. 3.

ſays

ſays Judge Blackſtone, " that the conſciences of poſterity were concerned in the rectitude of their anceſtors deciſions gave birth to thoſe dangerous political hereſies, which ſo long diſtracted the ſtate, but at length are all happily extinguiſhed." This judgment was the natural reſult of the aſſociated ideas of popery and tyranny; and it is notorious, though ſingular, that the majority of the nation at that time had been educated in the habits (as may be judged from the language of the ſtatutes) of never ſeparating the idea of a popiſh prince, from that of an arbitrary, unjuſt, and wicked monarch.

The nation formerly in the habit of never ſeparating the idea of a popiſh prince from that of a tyrant.

The bill of rights being uncontrovertibly the act of the nation, ſpecifies the charges, which the nation had found againſt King James the Second *, which are all reducible to

* Whereas the late king James the Second, by the aſſiſtance of divers evil counſellors, judges, and miniſters employed by him, did endeavour to ſubvert and extirpate the proteſtant religion, and the laws and liberties of this kingdom:

1ſt, By aſſuming and exerciſing a power of diſpenſing with and ſuſpending of laws, and the execution of laws, without conſent of parliament.

2d, By committing and proſecuting divers worthy prelates, for humbly petitioning to be excuſed from concurring to the ſaid aſſumed power.

3d, By iſſuing and cauſing to be executed a commiſſion

to his attempt to eſtabliſh his own upon the ſubverſion or extirpation of the proteſtant religion. And if we are to judge of the peccant part, by the application of the remedy, we clearly ſee, that the only innovations or changes, that were then introduced into the conſtitution and government, were directly calculated to prevent the future poſſibility of that happening, againſt which the conſtitution and laws had not then provided a ſecurity.

Change in the limitation of the crown.

The firſt of theſe changes was the limitation of the crown to the Prince of Orange and the Princeſs Mary his wife, with divers

miſſion under the great ſeal, for erecting a court, called *the court of commiſſioners for eccleſiaſtical cauſes.*

4th, By levying money for and to the uſe of the crown, by pretence of prerogative, for other time, and in other manner, than the ſame was granted by parliament.

5th, By raiſing and keeping a ſtanding army within the kingdom in time of peace, without conſent of parliament, and quartering ſoldiers contrary to law.

6th, By cauſing ſeveral good ſubjects, being proteſtants, to be diſarmed, at the ſame time when papiſts were both armed and employed, contrary to law.

7th, By violating the freedom of election of members to ſerve in parliament.

8th, By proſecutions in the court of King's Bench, for matters and cauſes cognizable only in parliament, and by divers other arbitrary and illegal courſes. Vid. Bill of Rights, 1 W & M. ſeſſ. 2. c. 2.

remainders

remainders or limitations over, to the abſolute excluſion of the late King James Second and his heirs, which was the line of ſucceſſion fixt and ſanctioned by the conſtitution of this realm, ever ſince it had made the crown hereditary. So determinately cautious were the nation, that the crown ſhould never more devolve upon a Roman catholic, that in the largeſt ſtretch of the power, which they certainly did poſſeſs, they for ever excluded the old legal and conſtitutional heirs to the crown, whether they ſhould profeſs that religion or not. Thus making this abdication or forfeiture of James more than perſonal, by extending it to the unoffending iſſue of his body begotten and to be begotten.

Change in the tenure of the crown.

The ſecond change was the tenure of the crown of England: for the act expreſsly enacts, "And whereas it hath been found by experience, that it is inconſiſtent with the ſafety and welfare of this proteſtant kingdom to be governed by a popiſh prince, or by any king or queen marrying a papiſt, the ſaid lords ſpiritual and temporal, and commons, do further pray, that it may be enacted, that all and every perſon and perſons that is, are, or ſhall be reconciled to, or ſhall hold communion with the ſee or church

church of Rome, or ſhall profeſs the popiſh religion, or ſhall marry a papiſt, ſhall be excluded, and be for ever incapable to inherit, poſſeſs, or enjoy the crown and government of this realm and *Ireland*, and the dominions thereunto belonging, or any part of the ſame, or to have, uſe, or exerciſe any regal power, authority, or juriſdiction within the ſame; and in all and every ſuch caſe or caſes, the people of theſe realms ſhall be, and are hereby abſolved of their allegiance; and the ſaid crown and government ſhall from time to time deſcend to, and be enjoyed by ſuch perſon or perſons, being proteſtants, as ſhould have inherited and enjoyed the ſame, in caſe the ſaid perſon or perſons ſo reconciled, holding communion, or profeſſing or marrying as aforeſaid, were naturally dead."

The community exerciſe their right to change the conſtitution and government.

By this act we ſee, that the community not only aſſerted, but exerciſed their right to alter and change the conſtitution and government of this country, as they choſe; for to pretend that this alteration in the ſucceſſion and tenure of the crown were not abſolute innovations and eſſential changes in the conſtitution, would be to prove the futility or incompetency, not only of this bill of

rights, but of every ſtatute, that has been paſſed in this nation ſince the revolution.

As to all the other complaints, which by that act the nation makes of former abuſes or encroachments made or attempted by the crown, they do not bring home the charges particularly to king James; but aſſert generally, that they were made or attempted in open and direct violation of the ancient indefeaſible rights and liberties of the people. And therefore the operative part of that ſtatute, which relates to thoſe rights and liberties, does not enact any thing new by way of grant, or even confirmation of thoſe rights and liberties to the people, but it conſiſts of theſe ſingular words: *They do claim, demand, and inſiſt upon all and ſingular the premiſes as their undoubted rights and liberties.* From hence, I think, I am fully juſtified in concluding, that the immediate cauſe of the revolution in 1688, was the diſlike, which the nation had to the religion of their ſovereign; as in fact the only innovations or changes then introduced into the conſtitution and government, were the immediate means adopted by the nation of preventing their future ſubjection to a Roman catholic ſovereign. The inherent rights and incumbent

The only alterations at the revolution were made to prevent the deſcent of the crown upon a Roman catholic.

incumbent duties of individuals and of the community, of which I have before ſpoken, will when candidly viewed, I hope, ſufficiently juſtify, and for ever eſtabliſh the principles, upon which our anceſtors effected the revolution, and their poſterity to this day cheriſh and ſupport it in its conſequences and effects.

I ſhall cloſe this preliminary digreſſion by a reflection, that ariſes naturally out of the combination of what I have already ſaid. All thoſe of the preſent diſſenting minority, who have hitherto avowed their ſentiments either by word or writing, acknowledge the neceſſity of ſome civil or political government, though they may wiſh the government of this country very different from what at preſent it is. Now no civil nor political government can ſubſiſt without ſome efficient and coercive civil or political authority; but all civil or political authority is proportionably efficient and coercive, as the members of the ſociety are compellable to ſubmit to it; and the members of any ſociety will be more or leſs amenable and ſubmiſſive to their magiſtrates, according to the degree of right, which they allow to their juriſdiction. If the power or authority of the magiſtracy has been impoſed upon the

Efficient coercive power of government.

community by external force or any ſort of compulſion, the ſubmiſſion to it cannot be expected to ſurvive the compulſive exactions of this tyrannical power, to which no free aſſent is given; and where there is no free aſſent in the governed to ſubmit, there can exiſt no right in the governors to rule, as is evident; for all lawful government is a compact between the governors and governed, which neceſſarily involves the freedom of the contracting parties.

The intent of toryiſm was to enforce ſubordination.

The chief end, which the high-flying zealots for kingly power in the zenith of toryiſm had in view, in deducing it immediately from Almighty God, was, I preſume, the more ſtrongly to enforce the obligation of ſubmitting to it. Much praiſe is due to them for their wiſhes and intentions to eſtabliſh ſubordination to the powers in being; but little credit can be allowed them for the ſelection of the means, which they applied to the end. For, in the firſt place, it was an immediate provocation to their opponents to call for their divine commiſſion, which I have as yet never found made out to any earthly ſovereign ſince the immediate divine appointments of ſome theocratic rulers of Iſrael. This primary defect of title in thoſe, who reſted the right upon this ground, neceſſarily

Failure in the means.

ceſſarily encreaſed the unwillingneſs of their opponents to ſubmit to it.

In the next place, it was highly injudicious in them to hold out the precious pearl of divine authority to thoſe, who either did not know its value, or would not acknowledge its virtue and efficacy; for to a perſon, who ſubmits with unreſerved ſincerity to the indiſpenſable obligations of the divine ordinances, it can matter but little, whether the obligation be impoſed upon him mediately or immediately by Almighty God. So in the caſe of this queſtion of difference, one party ſubmitted to the obligation of the divine ordinance to obey our rulers, becauſe they held that Almighty God had delegated his power to them immediately; the other party held, * "that the inſtitution of magiſtracy is *jure divino*, and the end of it is, that mankind might live under certain laws, and be governed by them; but what particular form of government each nation would live under, and what perſons ſhould be entruſted with the magiſtracy, without doubt, was left to the choice of each nation." Little therefore did it matter, ſince both parties agreed, that magiſtrates or rulers were to be obeyed and ſubmitted to by the divine ordinance, or *jure divino*, whether that power, to which we were

The ordinances of God equally binding, whether mediately or immediately communicated to us.

* Milton, ubi ſupra.

ſo commanded to ſubmit, were veſted in them by the immediate appointment of God, or by the intermediate appointment of the people, to whom God had given the power and right to chuſe what perſons ſhould be entruſted with the magiſtracy.

No one, who allows any binding force to divine authority upon earth will pretend, that the commandments of the old law, or the evangelical precepts of the new, loſe any degree of their binding obligation, becauſe they were impoſed upon mankind through the intermediation of Moſes and the apoſtles. We ſee from too fatal experience of our own hiſtory, how ineffectual the *jure divino* inſtitution of magiſtracy was to protect the ſacred perſon of the firſt magiſtrate appointed and acknowledged by the people, againſt the rebellious and murderous hands of that party, whoſe avowed champion the * aſſertor of this very doctrine was. If therefore we are to ſeek an authority or power upon earth, to which all ſuch perſons would actually ſubmit, we muſt derive it from the people or community, of which they are a part; for no man can conſiſtently refuſe ſubjection to the power, which he has himſelf given, recognized, and eſtabliſhed; becauſe this gift of power or authority by the people

The part which each individual has in the legiſlature, enforces the obligation of ſubmiſſion.

* Milton.

to

to the political magiſtracy or legiſlative authority of the ſtate, is in fact nothing more nor leſs, than the actual agreement of the majority of the community, which binds each individual unexceptionably to ſubmit unto it; no one therefore can invalidate or do away his own act, which confers a right upon others; and magiſtrates have rights as well as duties. In fact, the whole community has by this aſſent of the majority, a collective right to the ſubjection of each individual of its members. Thus, if the right to civil power be eſtabliſhed upon its true baſis, the obligation of ſubmitting to it will become indiſpenſably binding upon all men, whether they be impelled to it by their moral duty to their Creator, or by the mere civil effects of the ſocial contract, by which they remain members of the community.

Before I enter immediately upon the conſideration of each ſeparate branch of the legiſlature, I cannot ſuppreſs a general concluſion, which ariſes out of what has been already offered; for it is peculiarly incumbent upon me to prove to the conviction of my readers, that the *ſovereignty of all power not only originated from the people, but continues unalienably to reſide with them.* Since the firſt inſtitution of civil or political government

upon earth, there never exiſted, in my opinion, an inſtance, in which the tranſcendency of this ſovereign right in the people was ſo clearly demonſtrated, as in our revolution of 1688. For in that temporary diſſolution of the government, which was occaſioned by the abandonment or dereliction of it by the executive power, the people in reality and practice, carried their rights to an extent far beyond the ſpeculative allowances of the moſt unconfined theoriſts. So well ſatisfied were they of the general tenor of the conſtitution and government, that to ſuch parts, as they did not think fit to change and alter, they very wiſely endeavoured to add ſtrength, vigour, and authority. But imagination cannot conceive a greater ſtretch of human power, than to make the king's choice of his own religion (a right which every man poſſeſſes independently of the community) the immediate cauſe of his deprivation of all thoſe benefits and advantages, which the community had ſettled upon him, and which he and his anceſtors exerciſing that ſame religion, had for many centuries enjoyed in conſequence of ſuch ſettlement; nay, even to ſuch extent did they carry their power, that they excluded the whole line of his immediate ſucceſſors, not for their actual exerciſe of

The changes made at the revolution the ſtrongeſt poſſible caſe of the power of the people to change their government.

of this firſt right of man, but becauſe they might by poſſibility exerciſe it in the ſame manner, in which their progenitors had choſen to do it before them. They did not attempt to check, nor forbid, nor prevent the perſonal adoption or exerciſe of religion in the individual; but as there could be no ſovereignty enjoyed by any one, without the free conſent of the community, ſo the community determined, that no one, who ſhould in future chuſe to adopt and follow the Roman catholic religion, ſhould be capable of enjoying the crown of this realm. The abſolute deviation from the conſtitutional rule of hereditary ſucceſſion, by the excluſion of King James and his heirs, though the nation, for regulating the future ſucceſſion of the crown, reſorted to a common ſtock from a remoter heir of the Stuart family, was the moſt irrefragable proof, that could be given of the right to alter the ſucceſſion. And certainly it cannot be denied, but that it was an innovation in the conſtitution to make the renunciation of a certain religion the *ſine quâ non* condition of inheriting the crown; otherwiſe it could not have deſcended upon King James the Second, and the few years of his reign muſt be eraſed from the annals and ſtatute books of this realm.

When violent measures become neceſſary, art is requiſite to carry them into execution.

In the heat of the times, in which the majority of this community choſe to carry the exerciſe of their rights to ſuch an extraordinary extent, it certainly became neceſſary policy in the active miniſters of the nation's wiſhes and intentions, to carry them into execution in a lenient and palatable, if not artful manner. Thus, from not ſufficiently diſtinguiſhing between the rights of the people, which were exerciſed at the revolution, and the meaſures of the miniſters in carrying them into execution, have ariſen moſt of the contradictory judgments and opinions formed by poſterity in the complex of that great and memorable event. * "From theſe views aroſe that repugnance between the conduct and the language of the revolutioniſts, of which Mr. Burke has availed himſelf. Their conduct was manly and ſyſtematic; their language was conciliating and equivocal; they kept meaſures with prejudice, which they deemed neceſſary to the order of ſociety; they impoſed on the groſsneſs of the popular underſtanding, by a ſort of compromiſe between the conſtitution and the abdicated family; they drew a politic well-wrought veil, to uſe the expreſſions of Mr. Burke,

* Mackintoſh, p. 298, and 299.

over

over the glorious ſcene, which they had acted; they affected to preſerve a ſemblance of ſucceſſion, to recur for the objects of their election to the poſterity of Charles and James, that reſpect and loyalty might, with leſs violence to public ſentiment, attach to the new ſovereign." In forming our thoughts and judgment upon this great event, it never muſt be forgotten, that at the time, when the convention of the two eſtates, on behalf of the majority (which is equivalent to the whole) of the community, called King William to the throne, and recognized him as their ſovereign, there was an actual diſſolution of government, occaſioned by the flight and abdication of King James, who may perhaps with more ſtrictneſs be ſaid to have diſſolved, than to have violated the original compact between the governor and the governed; for wherever one of two contracting parties withdraws or recedes from the condition and obligation of the contract, there the contract of itſelf ceaſes.

Actual diſſolution of government by the abdication of King James.

It cannot be denied, but that all the writers upon this ſubject, who were living at the time of the revolution, have either, on the one ſide or the other, been guilty of ſome partiality. At this time of day, I will not even ſuppoſe the poſſibility of any ſuch undue bias bearing

Moſt writers partial upon the revolution.

ing upon the mind of any man, who undertakes to conſider and view that tranſaction in a mere hiſtorical point of view.

It would exceed my intent and purpoſe, were I to undertake either to juſtify or approve of every act of reſiſtance in any of the people againſt the commands of their ſovereign, from the acceſſion of king James the Second to the time of the revolution, or to blame and condemn the ſeveral acts of the ſovereign, which provoked ſuch reſiſtance. It is evident from obſervation, that a long ſeries and combination of acts may produce and even juſtify a conſequence, which no one ſingle act of the whole would of itſelf have produced or juſtified. I ſhall not therefore argue upon any of the actions, either of the ſovereign or of the nation, during the ſhort reign of this unfortunate monarch. But when the circumſtances and ſituation of the nation had, as it were, collected into one focus all the counteracting efforts of the oppoſite parties, there aroſe that neceſſity for deciſion in acting, that rendered every future act, either of the ſovereign or the people, in their reſpective political capacities, abſolutely concluſive.

In 1688 every act of the king or people concluſive.

The old uncontroverted principle, that, *Rex datur propter regnum et non regnum propter regem,*

regem, will enable us to form our mind very ſatisfactorily upon this great event. I ſhall take for granted, what I preſume no one will undertake to deny, *viz.* the right and poſſibility of a king's relinquiſhing, abandoning, or giving up that power, and thoſe rights, which had been given or deputed to him by the community. Without, therefore, taking into conſideration the reaſons, motives, or inducements, which brought over the prince of Orange with an armed force into this country, we are to conſider, and form our minds upon the conduct and actions of king James the Second, after that prince had once landed. It will not ſuffice to ſay, that king James, at that time, and under all circumſtances, found himſelf in a very embarraſſed ſituation; that he had reaſon to apprehend a general defection of his ſubjects, and to fear for the perſonal ſafety of himſelf and his family; and that conſequently his flight, and abandonment of the kingdom were to be looked upon, not as the acts of a free agent, but as the compulſive meaſures of the moſt dire neceſſity; and therefore that his flight out of the kingdom never can be conſtrued into an actual abdication or renunciation of his ſovereignty. It is immaterial alſo to conſider, what part of his ſubjects were ready and willing to adhere to

Perſonal views or motives of king James not to be conſidered.

A conſiderable part of the nation with him.

to him and obey his commands. Hiſtory tells us, that the whole navy of England were likely to remain ſtaunch unto him; nor is there any reaſon to imagine, that the army, which was commanded by lord Feverſham, would have deſerted from him; and it is more than probable, that had king James the Second, even at this time, ſhewn the ſmalleſt degree of energy, ſpirit, or rectitude in governing, he would have prevented the greateſt part of the nation from joining with the prince of Orange.

The rights and duties of the king and people reciprocal.

No ſort of compariſon can be drawn between the rights and duties of a ſovereign in his political capacity, and thoſe of a ſubject in the natural capacity of an individual; for, as I have before obſerved, the rights of the ſovereign are, in fact, the duties of the ſubject, and the duties of the ſovereign are the rights and liberties of the ſubject. Now no one can deny that the community have in themſelves an indefeaſible right of preſerving their own rights and liberties, and theſe in our community chiefly conſiſt in the advantages of a limited and efficient monarchy; and if that be by any means done away or aboliſhed, it neceſſarily induces an actual diſſolution of that government, by which the community had agreed to be governed.

Anarchy

Anarchy is allowed by all writers to be the greateſt political misfortune, which can befal a ſtate, and the firſt principle of ſelf-preſervation ſupplies every community with the right and the means of preventing and avoiding it. Attention to this laſt principle will at one glance develop the neceſſity, and juſtify the adoption of the revolution; for at that time the nation was in a ſtate of the moſt dreadful fermentation, and there could not be a ſtronger neceſſity for efficient energy in the executive power of government, in order to allay and counteract the ferment, which threatened the very ſubverſion of the nation. In this critical poſture of affairs, every action of the ſovereign will be perceived to draw with it the moſt important conſequences; nor can we in paſſing judgment upon them make any allowances for perſonal prejudice, or want of judgment, knowledge, reſolution, or courage.

The principle of ſelf-preſervation ſupplies the means of preventing anarchy.

I ſhall not reſume the queſtion, whether England or Scotland expreſſed with more propriety the actual ceſſation of king James's reign, when the former uſed the term *abdication*, and the latter *forfeiture* of the crown. The actual exerciſe of the executive powers of the ſupreme magiſtrate is abſolutely neceſſary for the actual ſubſiſtence of the Engliſh monarchy;

The ceſſation of the exerciſe of the executive power an actual diſſolution of government.

monarchy; if, therefore, king James the Second did, as far as he could, annihilate or even ſuſpend the operation of the ſupreme executive powers, it muſt be allowed that he did all that he could to annihilate, for the time at leaſt, the very exiſtence of the Engliſh monarchy. We need therefore only to conſider in what ſtate this nation would have been, had it been left but for the ſpace of one month in the ſituation, in which king James endeavoured to leave it; and we ſhall from thence be able to form a ſatisfactory judgment of the rights, which the nation ſo abandoned had in them to ſecure their own preſervation. He withdrew, in the perſon of the king, the whole executive power of government; he called in his writs, which were about to be iſſued for convening a parliament; he diſmiſſed his judges; he threw the great ſeal of England into the river; he diſbanded the army without pay; and let looſe a lawleſs armed force upon the nation. Now if a ſupreme executive magiſtrate, upon whom all ſubordinate magiſtrates depend, if the adminiſtration of juſtice, if armed force on certain occaſions be requiſite for preſerving our preſent conſtitutional form of government, it is ſelf-evident, that a king who has by overt and unequivocal acts attempted to

The actions of king James an abſolute abandonment of his ſovereignty.

deprive the community of theſe neceſſary means of ſupport and preſervation, muſt be allowed to have done whatever he could to diſſolve the government, and involve the nation in anarchy and confuſion. In this light the warmeſt devotee to the houſe of Stuart cannot ſurely deny, that king James the Second by theſe acts ceaſed, while their effects could laſt, to be *that* ſupreme executive power, which our conſtitution requires the king to be. The actual duration of theſe effects could not by poſſibility be known to the nation; and therefore as a community, upon the common principle of ſelf-preſervation, they had the indefeaſible right of adopting ſuch meaſures, as they thought moſt conducive to attain that end. For if a government be actually diſſolved for one hour, by the act of the governor, the primeval rights of the governed to chuſe, ſquare, and model their own government, revive in the ſame extent, as they enjoyed them before the formation of the government ſo diſſolved. And upon theſe principles we muſt at this day candidly allow, that our anceſtors, in 1688, did actually poſſeſs the right to make a new limitation of the crown, and to annex a new condition to the tenure of it.

Right of the nation to new model the government wholly at the revolution.

If

If we take an impartial view of the whole tranſaction, we ſhall neceſſarily conclude, that our anceſtors were ſatisfied with the general form and tenor of our conſtitution and government, by their continuing and confirming the greateſt part, when an opportunity offered itſelf of new modelling the whole; and conſidering that their then actual ſtate of anarchy, and the preceding ferment and diſturbances in the nation were by the majority of them attributed to their ſovereigns profeſſing a different religion from their own, it is not ſurpriſing, that for the preſervation and ſecurity of their own, as well as the peace and tranquility of their poſterity, they ſhould have taken the moſt effectual means of preventing the occaſion of any ſuch diſaſters in future. It was in fact a duty incumbent upon them to do it, under the prepoſſeſſions of the majority of the community at that time.

What king James ſhould have done, not to have abdicated.

If king James the Second, circumſtanced as he was in the year 1688, had put himſelf at the head of his army and militia; had he convened a free parliament; had he paid attention to the advice of his biſhops, and the remonſtrances of ſeveral of his people; and had he ſummoned all his liege ſubjects to their allegiance; whatever rebellion might have

have enſued from ſome of his ſubjects; and whatever might have been the fate of the arms of the prince of Orange, king James might have died in the field king of England, or been expelled by his rebellious ſubjects; but he never could have been ſaid to have abdicated, or forfeited, or abandoned his own or his peoples rights.

CHAP. IX.

OF THE SUPREME EXECUTIVE POWER.

The executive power.

I Am now come to ſpeak of the firſt branch of the legiſlative power of this realm, which the conſtitution has made the ſupreme executive power of the ſtate, and which it has veſted in a ſingle perſon, that is to ſay, in that perſon, male or female, to whom the crown by the rule of hereditary ſucceſſion ſhall deſcend. * It rarely happens, that we have the ſatisfaction of finding a legiſlative expoſition of any part of our conſtitution; whenever that happens, I feel myſelf emphatically bounden to ſubmit it to my readers; for by the principles already laid down and eſtabliſhed, the act of the majority of the community concludes every individual of the community; the act of the repreſentatives of the nation is the act of the nation itſelf; the

* I have already fully ſhewn the very eſſential alteration made in the rule of ſucceſſion at the revolution; the old line was diſcontinued, and the condition of *being proteſtant* was annexed to the capacity of ſucceeding. Subject to this deviation and condition, the preſent rule of deſcent remains the ſame, as it was originally ſettled by the conſtitution.

three

three eſtates or branches of the legiſlature, which complete the parliament, make the full repreſentation of the nation; and, therefore, it can be nothing ſhort of high-treaſon againſt the ſtate, to diſavow, contradict, or reſiſt this legiſlative authority, expreſſed in an act of parliament. A new fact in the events of kingdoms often draws forth an explicit declaration from the legiſlature of certain fundamental principles, rules, and rights, which before had ſubſiſted upon no other authority, than the univerſal unqualified admiſſion and ſubmiſſion of the community. So upon the acceſſion of queen Mary to the crown of England, in the year 1553, it was thought proper to make a full, clear, and explicit declaration of the rule and nature of the hereditary deſcent of the crown of England, as eſtabliſhed by the conſtitution of the realm.

The crown of England deſcendible to females.

* " Foraſmuch as the imperial crown of this realm, with all dignities, honours, prerogatives, authorities, juriſdictions, and preheminences thereunto annexed, united, and belonging, by the divine providence of Almighty God is moſt lawfully, juſtly, and rightly deſcended and come unto the queen's

* 1 Mary Seſſ. 3. c. i.

highneſs that now is, being the very true and undoubted heir and inheritrix thereof, and inveſted in her moſt royal perſon, according unto the laws of this realm; and by force and virtue of the ſame, all regal power, dignity, honour, authority, prerogative, preheminence, and juriſdictions doth appertain, and of right ought to appertain and belong unto her highneſs, as unto the ſovereign ſupreme governor and queen of this realm, and of the dominions thereof, in as full, large, and ample manner as it hath done heretofore to any other her moſt noble progenitors, kings of this realm; nevertheleſs, the moſt ancient ſtatutes of this realm, being made by kings then reigning, do not only attribute and refer all prerogative, preheminence, power, and juriſdiction royal unto the name of king, but alſo give, aſſign, and appoint the correction and puniſhment of all offenders againſt the regality and dignity of the crown, and the laws of this realm, unto the king; by occaſion whereof the malicious and ignorant perſons may be hereafter induced and perſuaded unto this error and folly, to think that her highneſs could ne ſhould have, enjoy, and uſe ſuch like authority, power, preheminence, prerogative, and juriſdiction, nor do ne execute and uſe all things concerning

cerning the ſaid ſtatutes, and take the benefit and privilege of the ſame, nor correct and puniſh offenders againſt her moſt royal perſon, and the regality and dignity of the crown of this realm, and the dominions thereof, as the kings of this realm, her moſt noble progenitors, have heretofore done, enjoyed, uſed, and exerciſed.

" For the avoiding and clear extinguiſhment of which ſaid error or doubt, and for a plain declaration of the laws of this realm in that behalf;

" Be it declared and enacted by the authority of this preſent parliament, that the law of this realm is, and ever hath been, and ought to be underſtood, that the kingly or regal office of this realm, and all dignities, prerogative royal, power, preheminences, privileges, authorities, and juriſdictions thereunto annexed, united, or belonging, being veſted either in male or female, are and be, and ought to be as fully, wholly, abſolutely, and entirely deemed, judged, accepted, inveſted, and taken in the one as in the other."

I bluſh to overcharge ſuch plain matter with arguments and proofs; but I truſt, that the liberality of thoſe, who themſelves ſtand not in need of them, will countenance and

encourage every attempt to enlighten others who may. Dr. Price has ſaid truly, * *Our firſt concern, as lovers of our country, muſt be to enlighten it*; and is *it not becauſe they are kept in darkneſs, and want knowledge, that mankind ſubmit to be treated as if they were a herd of cattle? Enlighten them, and you will elevate them.* This is wholeſome doctrine, and if rightly applied, will produce much good. But I wiſh daily experience did not fatally convince us, how groſsly it is miſapplied and abuſed. I preſume not abſolutely to determine, that the effects of the ſcholars imbibing theſe precepts, are ſtrictly attributable to the intention of the teacher in inculcating them. No error nor abuſe was ever attempted to be ſupported, but under the cover of ſome uncontrovertible general poſition. Thus protected, the malcontents of the day are taught voraciouſly to catch at every novelty, that can throw diſrepute and diſaffection upon our preſent eſtabliſhment in church and ſtate, with the intent to weaken, if they cannot diſſolve, the bond of their union and ſubmiſſion to it. Every noveliſt, every theoriſt, is now a politician, informing, inſtructing, illuminating mankind; and

The malcontents under general propoſitions catch at every novelty.

* Price, ubi ſupra.

ſeldom

ſeldom does the barb or poiſon within theſe glittering baits of knowledge and liberality ſhew its deadly effects, till the wound is irremediable. With all the boaſted preferences, which our preſent exiſtence gives us over our predeceſſors, I find, that about two centuries ago this ſort of political angling was alſo the favourite amuſement of the malcontents of thoſe days; and whether the ſhoals of gudgeons were then more or leſs numerous than at preſent, certain it is, that there then were, in ſome of our predeceſſors, ſufficient knowledge, penetration, and firmneſs, to detect and reject the flattering deluſion. * "Amongſt many errors concerning religion, which are currant in this unfortunate age, none is more dangerous or pernitious, than the opinion of ſuch, as are commonly called politikes; ſo named, not becauſe they practize true and perfect policie, but becauſe they eſteeme themſelves, or are of many falſly reputed for prudent and politike men; and, therefore, as the Latin word *tyrannus*, which at firſt did ſignify a monarche and abſolute kinge, came afterwardes, by the abuſe of roial authority to ſignify only a *tyrant*, and as in like manner the word *latrones* ſignified

False policy formerly known and rejected.

* Fitzherbert's Preface to his Treatiſe concerning Policy and Religion, printed in 1606.

at the firſt, ſuch as were the guards of princes, and grew in time by their diſloyalty to be underſtood of *robbers* and theeues; ſo alſo, though the name of a *politike* doth ſignify in deede ſuch a one, as practizes that parte of humaine prudence, which concerneth ſtate, and is properly called *policy*, yet by the abuſe of ſuch, as profeſſe the ſame, it beginneth in all languages to be taken in euil parte, and is commonly applyed only to thoſe, who framinge a policy after their own fancy, no leſſe repugnant to reaſon, than to conſcience and religion, change all the courſe of true wiſdome and prudence, and peruert the order of nature it ſelfe, preferring things leſſe worthy before the more worthy, inferiour thinges before ſuperiour, corporal before ſpiritual, temporal before eternal, humane before deuine, the body before the ſoule, earth before heauen, and the world before God."

The ſame propoſition often productive of the moſt oppoſite effects in the ſame perſon.

True propoſitions may be ſo applied to perſons, times, and circumſtances, as to produce the moſt oppoſite effects: the ſame idea will impel the ſame individual, according to the diſpoſition or affection of the moment, to the moſt contrary emotions. I will inſtance a paſſage in Dr. Price's ſermon, which would probably excite very different ſentiments in the breaſt of the ſame perſon,

in

in the full glow of gratitude for royal favour, in the chapel of St. James, and ſoured with the loſs of place or penſion in the diſcontented congregation of the Old Jewry: * "Civil governors are, properly, the ſervants of the public; and a king is no more, than the firſt ſervant of the public, created by it, maintained by it, and reſponſible to it; and all the homage paid him is due to him on no other account, than his relation to the public; his ſacredneſs is the ſacredneſs of the community; his authority is the authority of the community; and the term of *majeſty*, which it is uſual to apply to him, is by no means *his own* majeſty, but the *majeſty of the people*; for this reaſon, whatever he may be in his private capacity, and though, in reſpect of perſonal qualities not equal to, or even far below many among ourſelves, for this reaſon, I ſay, (that is, as repreſenting the community and its magiſtrate) he is entitled to our reverence and obedience. *The words moſt excellent majeſty* † are rightly applied to

* Dr. Price's Diſc. on the Love of our Country, p. 23, 24.

† The word *majeſty* is not, at leaſt was not always, eſſential to expreſs that conſtitutional deference and reſpect, which are due to the ſovereign; for, according to hiſtory, king Henry VIII. was the firſt of our ſovereigns, to whom the term *majeſty* was attributed.

him;

him; and there is a reſpect, which it would be criminal to withold from him."

Treaſon to deny the king's prerogative.

Since it would be treaſonable for any Britiſh ſubject openly to maintain, that the conſtitution of this kingdom does not veſt the ſupreme executive power in the ſingle perſon, who by the fixed rule of hereditary deſcent, ſhall have ſucceeded to the throne; it is equally true and certain, that the conſtitution has affixed a certain limitation of prerogative or power to this perſon ſo in poſſeſſion of the throne, which it would alſo be treaſonable in any ſubject or member of the community to queſtion or deny. I do not think it very material to canvaſs the motives, which draw from ſubjects that reſpect and reverence to the king's majeſty, which Dr. Price ſays it would be criminal to withhold. Thoſe, who derive the king's ſovereignty immediately from Almighty God, can ſcarcely be conceived limited in their reverence and homage to his vicegerent upon earth; thoſe, who trace it from the immediate appointment of the community, undervalue and contemn the people, in proportion as they ſubſtract from the majeſty of their appointee; for the refuſal of the abſolute honours to the prince, is the diſavowal of the relative honour to the people. I ſhall, therefore, here-

The abſolute honour of the king is the relative honour of the people.

after

after conſider the ſubmiſſion and reſpect due from the ſubject to the ſovereign, as a civil duty and obligation, which every member of the community is indiſpenſably obliged to perform, under the penalties, which the ſtate has annexed to the crime of high treaſon.

The moſt vehement opponents of kingly power admit, after Milton, * that "*there is no power but of God*; that is, no form, no lawful conſtitution of any government". For Almighty God † "is equally the original of it, whether he firſt lodged it more in common, and left the communication of it to particular perſons, to be the reſult of reaſon and deliberation, or himſelf immediately gave it to thoſe particular perſons." And thus clearly are to be underſtood thoſe words of our bleſſed Redeemer to Pilate, ‡ "*Thou wouldſt not have any power over me, unleſs it were given thee from above*;" unleſs it be contended that Pontius Pilate, or Tiberius Cæſar, whoſe lieutenant he was, had like Joſhua, Saul, or David received an immediate appointment or commiſſion from God, to rule over the people of Iſrael. I have cited this

All power from God, whether mediately or immediately.

* Milton's Defence, p. 64.

† Hoadley's Defence of Mr. Hooker's Judgment, p. 199.

‡ Joan. c. xix. 2. 11.

one

one quotation from ſcripture, that both parties may draw from it the ſatisfactory inference, that the ſubmiſſive deference of any ſubject to an acknowledged ſovereign will ever be regarded as a moral duty to Almighty God. Little will it avail me to attempt to prove or confirm my reaſoning by the application of paſſages from the holy writ, where moſt men interpret it by their own private judgment; and in this very controverſy, I firmly believe, that there is not a paſſage relating to kingly or magiſtratical power, from the beginning of Geneſis to the end of the Revelations, which has not been tortured by the ſupporters of the oppoſite parties into contrary meanings.

The ſcriptures rendered pliant to the ſenſe of every interpreter.

The liberty, with which the eccleſiaſtical and theological writers upon this controverſy have accommodated the authority of the ſcriptures to their reſpective doctrines, has been cloſely followed by moſt hiſtorical, political, and legal writers; for we find, through their writings, the very ſame texts quoted from the old approved authors, Bracton, Briton, Fleta, Forteſcue, and others, to prove and ſupport their oppoſite doctrines. It is neither incumbent upon me, nor is it competent for me to diſcuſs the propriety of accommodating the ſenſe of the holy ſcrip-

So are many political writers.

tures to oppoſite purpoſes; but I feel it an indiſpenſible duty to endeavour to affix a determined meaning to thoſe civil authorities, which affect the queſtion under our conſideration.

The king to be conſidered as either in his *natural* or in his *political* capacity.

The king (or queen) * of this realm, in whom the conſtitution places the ſupreme executive power, is to be conſidered either in the natural capacity of a human individual, or in his political capacity as an integral component part of the legiſlature. Some things are ſaid of the king, which are true only as applicable to his natural capacity, and falſe, if pretended to be applied to his political capacity; and ſo *vice verſa*. It will be my endeavour to keep my readers attention to the difference. His natural capacity he receives immediately from Almighty God; his political capacity immediately from the people or community; but not without the permiſſion of Almighty God, from whom the people receive immediately their power and right to confer it: thus are reconciled the words of St. Peter, calling kings *a human ordinance, or human appointment*, with the words of St. Paul, ſtyling magiſtrates *the ordinance of God*.

* Whenever I ſhall in future ſpeak generally of the king, I beg alſo to be underſtood of a queen regnant, ſuch as were Mary, Elizabeth, and Anne.

The

The king is a corporation in his political capacity.

The king, in his political capacity, is a corporation ſole: now * "corporations ſole conſiſt of one perſon only and his ſucceſſors in ſome particular ſtation, who are incorporated by law, in order to give them ſome legal capacities and advantages, particularly that of perpetuity, which in their natural perſons they could not have had. But as all perſonal rights die with the perſon, and as the neceſſary forms of inveſting a ſeries of individuals, one after another, with the ſame identical rights, would be very inconvenient, if not impracticable, it has been found neceſſary, when it is for the advantage of the public to have any particular rights kept on foot and continued, to conſtitute artificial perſons, who may maintain a perpetual ſucceſſion, and enjoy a kind of legal immortality." So in this ſenſe is it ſaid, that the king never dies: and thoſe, who are his heirs in his natural capacity, are called his ſucceſſors in his political capacity; for a corporation can have no heirs, as *nemo eſt heres viventis*, and a corporation never dies.

* Blak. Com. b. i. c. xviii.

CHAP.

CHAP. X.

OF THE SUPREME HEAD OF THE CHURCH OF ENGLAND.

I Shall follow the common order of aſſociating our ideas of church and ſtate, by firſt conſidering the king as ſupreme head of the church of England. Now, although in this diſcuſſion I ſhall rather conſider, what the conſtitution now is, than what it heretofore was; yet, as whatever eccleſiaſtical ſupremacy over the church of England is now veſted by the conſtitution in the perſon of the king, is generally ſuppoſed to be veſted in him by the continuance, recognition, revival, or transfer of an old power, and not by the creation, donation, and inveſtiture of a new one, as I ſhall endeavour to make appear, it will be incumbent upon me to make ſome reſearches into the origin and eſtabliſhment of *ſpiritual or eccleſiaſtical power* in this country. I will preſume it uſeleſs to repeat any thing I have heretofore ſaid, to prove that the majority of the community, who muſt conclude the whole, have not only an indefeaſible right, but an indiſpenſable obligation and duty to adopt that divine cult or worſhip, which

What eccleſiaſtical ſupremacy veſted in the king.

Right and duty of individuals to follow the dictates of God.

which they ſhall conſcientiouſly think God requires from them, and to countenance and ſupport it with what civil ſanctions they ſhall think proper. My examination therefore will not be, whether our anceſtors exerciſed their right, and fulfilled their duty more or leſs judiciouſly or perfectly than their ſucceſſors; but in what manner and to what extent they actually made a religious eſtabliſhment an eſſential part of their civil conſtitution. This diſcuſſion has often been a ſubject of ſuch rancorous controverſy, that I am not totally free from fear, leſt the liberality even of the preſent day, may be at firſt unequal to form a perfectly unbiaſſed judgment upon the ſubject. I am now to examine the truth, not the reaſon of facts.

Acknowledgment of the pope's ſpiritual ſupremacy no uſurpation.

As true as it is, that in the twenty-fourth year of the reign of king Henry VIII. the majority of the people of England did, by the act of their repreſentatives in parliament, renounce and throw off the *ſpiritual* ſupremacy of the pope of Rome; ſo true is it, that they had uninterruptedly acknowledged and ſubmitted unto it for near one thouſand years before the twenty-fourth of Henry VIII. A.D. 1532. It is frivolous in the extreme, to treat this ſpiritual ſupremacy

of

of the pope as a papal uſurpation; for who can be ſo ſimple as to believe, that ſuch ſubmiſſion could have been forced upon the Engliſh nation, who were ever jealous of their liberty, againſt their conſent, by one hundred and ſeventy-one popes, who during that ſpace of time filled the papal ſee.

We muſt allow to our anceſtors the ſame right and the ſame obligation of following the dictates of their conſciences, which we claim and acknowledge ourſelves. By the tenets of the religion, which they then profeſſed, the ſpiritual primacy of the viſible ſucceſſor of St. Peter was an eſſential article of their belief; their ſubmiſſion therefore to the biſhop of Rome, as ſuch viſible acknowledged head of the church was as free, as their adoption of the religion, which taught the neceſſity of ſuch a primacy. What an abſurdity would it not be, to ſpeak of the belief and profeſſion of the Roman catholic religion in Poland or Portugal as an uſurpation? And if our anceſtors thought proper to make a free voluntary tender and ſecurity to the biſhops of Rome, either of Peter Pence, firſt fruits, or any other civil advantage, or benefit, how can that be called an uſurpation, which could neither have been originally impoſed, nor continue to be enforced

Conſent of the nation inconſiſtent with uſurpation.

forced by any civil or human means, without the conſent of the nation? The fact demonſtrates the truth! For from the moment, in which the nation withdrew their conſent, from that moment the biſhop of Rome enjoyed no more civil or temporal rights, benefits, nor advantages within this kingdom, than St. Peter did from our heathen Britiſh anceſtors, who inhabited the iſland in his days.

King Henry's belief of and ſubmiſſion to the pope's ſupremacy the ſtrongeſt proof of its actual exiſtence.

As to this point, I know of no authority, that can be ſo concluſive, as that of king Henry himſelf, who, about ten years before the paſſing of this act, in defence of the ſpiritual ſupremacy of the pope againſt Martin Luther, wrote a book, which he ſubſcribed with his own hand, and ſent to pope Leo X. by Dr. Clerke, the biſhop of Bath and Wells, and for which he obtained the title of *defender of the faith*, which has been ever ſince kept up by our ſovereigns to this day.

* " I will not offer ſo much injury unto the pope, as earneſtly and carefully to diſpute heere of his right, as though the matter might be held in doubt; it is ſufficient for that, which now we haue in hand, that his enemy (Luther) ſheweth himſelf ſo much

* Henry VIII. in Def. Sacram. cont. M. Luth.

to

to be carried away with paſſion and fury, as he taketh all faith and credit from his owne ſayings, cleerly declaring his malice to be ſuch, as it ſuffereth him neither to agree with himſelf, nor to conſider what he ſaith."

And then, after confuting *Luther*'s opinion and aſſertion, *that the pope neither by diuine or humane law, but onlie by uſurpation and tyrannie, had gotten the headſhipp of the church*, he continues, " *Luther* cannot deny, but that all the faithfull chriſtian churches at this daie doe acknowledge and reuerence the holy ſea of *Rome*, as their mother and primate, &c. And if this acknowledgment is grounded neither in diuine nor humane right, how hath it taken ſo great and generall roote? How is it admitted ſo uniuerſally by all chriſtendome? When began it? How grew it to bee ſo great? And whereas humane conſent is ſufficient to giue humane right at leaſt, how can *Luther* ſaie, that heere is *neither diuine nor humane right*, where this is, and hath been for time out of minde, uniuerſall humane conſent? Truly if a man will looke ouer the monuments of things and times paſt, he ſhall find that preſently after the world was pacified (from perſecution) the moſt parte of chriſtian churches did obay the Roman; yea, and the Greeke church alſo,

though the empire were paſſed to that parte, wee ſhall find, that ſhee acknowledged the primacy of the ſame Romaine church, but only when ſhee was in ſchiſme. And as for *S. Hierome*, though he were no Roman, yet did hee in his daies aſcribe ſo much authoritie and preheminence to the Roman church, as he affirmed, that in matters of great doubt it was ſufficient for his faith to bee allowed and approued by the pope of Rome, &c." And he ſays further.

" Whereas *Luther* ſo impudently doth affirme, that the pope hath his primacie by no right, neither diuine nor humane, but onlie by force and tyrannie, I doe wonder how the mad fellow could hope to find his readers ſo ſimple or blockiſh, as to beleiue, that the biſhop of *Rome*, being a prieſt, unarmed, alone, without temporall force or right, either diuine or humane (as he ſuppoſed) ſhould bee able to get authoritie ouer ſo manie other biſhops his equals, throughout ſo manie and different nations, ſo far off from him, and ſo little fearing his temporall power; or that ſo manie people, citties, kingdomes, commonwealths, prouinces, and nations could bee ſo prodigall of their owne libertie, as to ſubject themſelues to a forraine prieſt (as now ſo manie ages they haue done) or to give him ſuch

ſuch authoritie ouer themſelues, if he had no right thereunto at all."

I cite theſe quotations, not for the ſake of the reaſoning or argument contained in them, but merely to prove, that the authority of the ſee of Rome, in all ſpiritual matters, was in fact *freely* ſubmitted to by the community of this realm, before the reformation. For nobody will ſuſpect King Henry VIII. of ſubmitting tamely, and with full reflection, to any uſurped or aſſumed authority whatſoever.

What the ſupremacy is.

We are now to examine what this primacy was, which was ſuppoſed to be transferred from the pope to the king, in order to determine what the ſupremacy of the king over the church of England is at this hour. Sir Edward Coke, partly from official pomp and rigour, and partly from natural pedantry and pride, has undertaken to reſt the title of his ſovereign to this prerogative of ſpiritual ſupremacy upon ſuch grounds, as never can ſtand the teſt of a cool diſpaſſionate enquiry. * " The kingdom of England being an abſolute empire and monarchy, conſiſting of one head, which is the king, and of a body politicke divided into two general parts, the clergy and the laity; both of them, next un-

* Rep. iv. fol. 9.

der God, muſt be ſubject and obedient to the ſame head in all cauſes; for that otherwiſe he ſhould be no perfect monarch, or head of the whole body *." If Sir Edward Coke had either underſtood, or wiſhed well to our conſtitution, he would never have complained, that the kings of England were not ſufficiently *abſolute monarchs* for all the purpoſes of our conſtitution, without the ſuperaddition of ſpiritual juriſdiction. How much more truly and more philoſophically is this accumulation of prerogative repreſented by the learned biſhop of Worceſter, as the efficient cauſe of that exceſs of prerogative in the Tudors, which had nearly ſwelled into arbitrary and abſolute deſpotiſm. † " I brought theſe general conſiderations only to ſhew the reverend opinion, which of courſe would be entertained of this mixt perſon, *the ſupreme head of the church*, compounded of a king and a pope; and how natural a foundation it was

This addition of prerogative in the king, the cauſe of its exceſſes under the Tudors.

* I have never met with any writer, who has pretended to deny, that every Engliſh clergyman is a ſubject of our king, and ſubject to all the laws of the realm. If the clergy have in any age claimed indulgences, exemptions, or diſpenſations, they claimed them no otherwiſe, than from the legiſlative power, which alone could grant them.

† Dr. Hurd's Moral and Political Dialogues, vol. ii. p. 284, and ſeq.

for

for the ſuperſtructure of deſpotic power in all its branches. But I now haſten to the particulars, which demonſtrate, that this uſe was actually made of that title.

Court of high commiſſion.

" And, firſt, let me obſerve, that it gave birth to that great and formidable court of the *high commiſſion*, which brought ſo mighty an acceſſion of power to the crown, that, as experience afterwards ſhewed, no ſecurity could be had for the people's liberties, till it was totally aboliſhed. The neceſſity of the times was a good plea for the firſt inſtitution of ſo dangerous a tribunal. The reſtleſs endeavours of papiſts and puritans againſt the eccleſiaſtical eſtabliſhment gave a colour for the continuance of it. But as all matters, that regarded religion or conſcience were ſubjected to its ſole cognizance and inſpection, it was preſently ſeen how wide an entrance it gave to the moſt tyrannical uſurpations.

Court of ſtar chamber.

" It was further natural, that the king's power in civil cauſes ſhould keep pace with his authority in ſpiritual; and fortunately for the advancement of his prerogative, there was already erected within the kingdom another court of the like dangerous nature, of ancient date, and venerable eſtimation, under the name of the court of *ſtar chamber*, which brought every thing under the direction of

the crown, that could not ſo properly be determined in the high commiſſion. Theſe were the two arms of abſolute dominion, which, at different times, and under different pretences, were ſtretched forth to the oppreſſion of every man, that preſumed to oppoſe himſelf to the royal will or pleaſure. The ſtar chamber had been kept, in former times, within ſome tolerable bounds; but the high and arbitrary proceedings of the other court, which were found convenient for the further purpoſe of reformation, and were therefore conſtantly exerciſed, and as conſtantly connived at by the parliament, gave an eaſy pretence for advancing the ſtar chamber's juriſdiction ſo far, that in the end its tyranny was equally intolerable, as that of the high commiſſion.

High notions of prerogative in our kings.

"Thus the king's authority, in all caſes ſpiritual and temporal, was fully eſtabliſhed, and in the higheſt ſenſe, of which the words are capable. Our kings themſelves ſo underſtood it; and when, afterwards, their parliaments ſhewed a diſpoſition to interfere in any thing relating either to church or ſtate, they were preſently reprimanded, and ſternly required not to meddle with what concerned their prerogative royal, and their high points of government."

This reverend and learned prelate is certainly

tainly warranted in attributing theſe effects to this tranſlation of ſpiritual power from the pope to the king; but no individual is warranted to revile or traduce the community, much leſs to riſe up againſt it, becauſe at any particular time, they thought proper to increaſe the proportion of prerogative or power, which the conſtitution had formerly annexed to the executive branch of the legiſlature. Bleſſed is the nation at this day in a monarch, to whom this extenſion of prerogative is but an increaſe of his people's happineſs. The conſtitution formerly did, and ſtill does, admit of this general diviſion of the people into *clergy* and *laity*; and the eccleſiaſtical or ſpiritual rights and liberties of the former ſeem anciently to have been more generally underſtood and admitted, than the civil or temporal rights and liberties of the latter. Thus, in the firſt legiſlative act of the community, that has been handed down to us in writing, which is called *Magna Charta*, the great charter of our liberties, and which was paſſed in the 19th year of Hen. III. about the year of our Lord 1225, we find the firſt care and ſecurity is had of the church, viz. *that the church of England ſhall be free, and ſhall have all her whole rights and liberties inviolable.* Had theſe been either dubious or uncertain,

Right of the community to increaſe the prerogative.

The liberties of the church granted by the nation.

uncertain, they would undoubtedly have been ſpecified and aſcertained in the charter. And if theſe rights and liberties were not holden and enjoyed by the grant, conſent, or recognition of the nation, the legiſlature would not have preſumed to ſanction or confirm them to the church. That theſe *rights and liberties* conſtituted the *civil eſtabliſhment* of the church, and therefore proceeded wholly from the nation, or the legiſlative power of the ſtate, is evident from the term *church of England*; for it is notorious, that this term did not import then, as it now does, a ſeparate religious ſociety, differing in doctrine, government, and diſcipline, from the Church of Rome; for in all real ſpiritual matters it then was one with the church of Rome, in communion with her, and ſubordinate to her, as to its ſupreme head. Theſe rights and liberties therefore made no part of her doctrines, but conſiſted merely in the civil ſanctions, with which the Engliſh nation thought proper to countenance and ſupport that religion, by making the clergy of it a ſeparate and diſtinct body from the laity.

In the days of Bracton, the ſpiritual ſupremacy of the pope acknowledged by the nation.

Bracton, who lived in this very reign, but had written his book in the preceding reign of King Henry II. and muſt conſequently have been converſant with the ſpirit and practice

practice of the conſtitution and laws of his own times, confirms this general diviſion of the people into clergy and laity, and immediately attributes the ſpiritual ſupremacy, to which the nation was then ſubject, not to the king, but to the pope. * "Amongſt men there is a difference of perſons; becauſe of men ſome are diſtinguiſhed and preferred, and have a ſuperiority over others. Our lord, the pope for inſtance in ſpiritual matters, which relate to the prieſthood, and under him archbiſhops, biſhops, and other inferior clergy." This authority will alone ſuffice to expoſe the futile attempt of Sir Edward Coke to deduce Queen Elizabeth's title to the ſpiritual ſupremacy from the old conſtitution and common laws of the realm; for in a matter of this nature and of this date, nobody will, I believe, ſet up the authority of Sir Edward Coke againſt that of Bracton. Sir Edward Coke pretends not to veſt in the queen any other ſpiritual ſupremacy, than what the ancient kings of England poſſeſſed: now Bracton expreſsly ſays, that in his own

* Apud homines verò eſt diſtinctio perſonarum; quia hominum quidam ſunt præcellentes & prælati, & aliis principantur. Dominus papa videlicet in rebus ſpiritualibus, quæ pertinent ad ſacerdotium, & ſub eo archiepiſcopi, epiſcopi, & alii prælati inferiores. Bracton de Leg. & Conſuetud. Ang. l. i. fol. 5.

and

and preceding times, the pope had *that* ſuperiority, which Sir Edward Coke labours to prove was veſted in Queen Elizabeth by the ancient conſtitution of the realm.

No foreign law can have force, but by the adoption of the nation.

As no law can be enacted in a ſtate, without the free aſſent of the people, which neceſſarily attends the exerciſe of the legiſlative power, much leſs can any foreign law enacted by another ſtate or community, acquire any binding or coercive effect without the voluntary adoption of the community, which admits or receives it. As therefore upon this ground, certain canon laws, decretals, and eccleſiaſtical ordinances from the court of Rome had, for about one thouſand years, been received and ſubmitted to in this country, the moment this conſent of the nation was withdrawn, they immediately loſt whatever energy, force, or binding effect, they had during that time acquired.

The whole canon law never was adopted by this nation.

It is very evident, that our anceſtors never did give a general unlimited ſubmiſſion to the whole canon law, as appears from the firm and heroic anſwer of the barons at Merton, in the reign of Hen. III. A. D. 1235. The queſtion was moved in parliament, * " Whether one being born before matri-

* 20 Hen. III. c. 19.

mony

mony may inherit in like manner, as he that is born after matrimony? All the biſhops replied, that they would not, nor could not anſwer to it, becauſe this would be againſt the common form or uſage of the church; and all the prelates entreated the lords (magnates) that they would conſent that all ſuch, as were born before matrimony ſhould be legitimate, as well as they that were born after matrimony, as to the ſucceſſion of inheritance, foraſmuch as the church made ſuch for legitimate. And all the earls and barons with one voice anſwered, that they would not change the laws of the realm, which had hitherto been uſed and approved of." Here we ſee the biſhops entreating the laity to adopt a part of the canon law, which they would certainly not have done, if, without their aſſent, it could have had any force in this nation; for the clergy have in no age uſed the deprecatory ſtile of ſupplication to enforce a duty of obligation.

Every part of the canon law, *proprio vigore*, equally binding.

One part of the cannon law cannot, *proprio vigore*, have a more binding quality than another; they therefore, who may reject a part of it, may reject the whole. I have dwelt on this tranſaction to prove, that whatever force or authority the canon law had acquired in this country, it was ſolely owing

to

to the free aſſent and adoption of it by the repreſentatives of the nation. Had not this been ſo univerſally underſtood at this early period, we never ſhould have ſeen recorded a petition of the clergy rejected by the laity on a point, which to the glory of the nation is a law at this hour. The biſhop of Worceſter attributes this anſwer of the barons (whom, in one breath, he very unaccountably calls both *virtuous* and *licentious)* * to their liberty and patriotiſm. † "They had nothing to object to the propoſal itſelf; but they were afraid for the conſtitution." I cannot help allowing ſome credit to my anceſtors for their judgment and experience, as well as for their love of liberty and the conſtitution. And if I am to paſs any judgment upon the conduct of the legiſlative body of that day, I cannot do it impartially without commending, on one hand, the conſtitutional prudence of the clergy in *aſking* the laity to adopt the canon law, and acquieſcing, without reply, in their refuſal; and applauding, on the other hand, the heroic firmneſs of the

* Dr. Hurd's Dial. vol. ii. p. 190. "Yet the anſwer of the *virtuous* barons is as follows."—"Theſe barons, as *licentious* as they were, preferred their liberty to their pleaſure."

† Ibid. p. 191.

laity,

laity, in reſiſting the powerful influence of the whole hierarchy, by preſerving the laws, which they thought beneficial to the community.

Of real ſpiritual power or juriſdiction.

In order to form our minds clearly and ſatisfactorily upon the ſubject of this ſpiritual ſupremacy or headſhip of the church of England, we muſt firſt fix and eſtabliſh our ideas of the nature and quality of *ſpiritual* power or juriſdiction; by which I mean that *ſpiritual* power or juriſdiction, which our bleſſed Redeemer came upon earth to eſtabliſh, for the guidance, maintenance, and preſervation of his church; which he delivered over to his apoſtles, to be continued, through their ſucceſſors, to the end of time. This is eſſentially paramount to, and independent of all temporal power or authority whatſoever; the grounds of its ſupport, and the means of its propagation and continuance are merely ſpiritual; and its real properties, nature, and effects, will be moſt clearly perceived in the exerciſe of it in thoſe countries, where the Chriſtian religion had never acquired any degree of civil eſtabliſhment. The end of this *ſpiritual* power is to direct us to ſalvation by inſtruction, diſcipline, and correction; and it has for its object only ſuch ſpiritual things, as belong to the ſoul, as matters

Its nature.

Its end.

of faith, morality, ſacraments, and ſuch like; and it is carried into action or exerciſe by preaching, teaching, adminiſtration of the ſacraments, cenſures, ſuſpenſions, excommunication, &c. * "The apoſtles, and all Chriſtian miniſters, for many centuries, lived on the voluntary contributions of their reſpective churches, and they had no means of enforcing their cenſures beſides excluſion from their ſocieties." It is by the 30th canon of the apoſtles affirmed, that St. Peter excommunicated Simon the magician, when he offered to purchaſe the gift of the Holy Ghoſt with money: † "But Peter ſaid to him, thy money periſh with thee, becauſe thou haſt thought that the gift of God may be purchaſed with money; *thou haſt neither part nor lot (participation) in this matter (word)*, for thy heart is not right in the ſight of God. Repent, therefore, of this thy wickedneſs, and pray God, if perhaps this thought of thy heart may be forgiven thee; for I perceive that thou art in the gall of bitter-

Its means.

Spiritual excommunication of Simon Magus.

* Dr. Prieſtley's Letters to Mr. Burke, Let. VII. p. 67.

† Acts, ch. viii. ver. 20. Hence the crime of *ſimony*, which, as well as *excommunication*, is productive of very different effects in a country, where there is a civil eſtabliſhment of the Chriſtian religion, and where there is none.

neſs,

neſs, and the bond of iniquity." So St. Paul excommunicated the inceſtuous Corinthian, * and the two heretical men, Hymeneus and Alexander †.

Spiritual excommunication produces no civil effect.

No civil effect was produced in any of theſe excommunicated parties; but they remained to all intents and purpoſes *recti in curiis* of their reſpective communities as much after, as they were before their excommunication. And indeed Almighty God ſeems to have ſet us theſe ſpecial examples of the ſpiritual power in his church to chaſtiſe by ſpiritual weapons in three inſtances, for crimes not cognizable by the temporal or civil courts of thoſe countries, in which they were committed, that we might the more diſtinctly ſee and determine the line of difference between the two juriſdictions; ‡ "*For the weapons of our warfare are not carnal, but mighty through God.*" If the excommunica-

* 1 Cor. v. ver. 1. "For ſuch fornication, as is not ſo much as named amongſt the Gentiles, that one ſhould have his father's wife."—ver. 13. "But them that are without God judgeth: therefore put away from amongſt yourſelves that wicked perſon."

† 1 Tim. i. ver. 19, 20. Holding faith and a good conſcience, which ſome having put away, concerning faith, have made ſhipwreck. Of whom is Hymeneus and Alexander, whom I have delivered unto Satan, that they may learn not to blaſpheme."

‡ 2 Cor. ch. x. ver. 4.

tion had been impoſed for a civil crime, this difference might have been leſs diſcernible to uninformed minds.

Simony no civil crime;

nor hereſy.

In the firſt inſtance, there could be no human law at that time againſt the crime of ſimony; nor, indeed, could hereſy have been criminal in that ſtate, which knew not the religion, from which it was a voluntary and obſtinate deviation; and St. Paul intimates, that the Corinthians had not mentioned this ſort of inceſt in their whole code of laws, conſequently had not annexed any penalty or puniſhment to the commiſſion of it, becauſe they preſumed upon the impoſſibility of its being committed. * "The ſanctions of the church of Chriſt in this world are like itſelf, and like the *weapons of the chriſtian warfare, not carnal* and temporal, but of a *ſpiritual* nature; and do not affect a man's perſon, life, liberty, or eſtate. All that our Saviour directs in caſe of the greateſt refractorineſs, is to conſider ſuch obſtinate offenders as *heathen men and publicans*; that is, we are juſtified in ceaſing to look upon them as brethren and fellow chriſtians; and they are not entitled to our peculiar affection and attention as ſuch.

Inceſt not cognizable by the civil law of Corinth.

In what excommunication conſiſts, according to Dr. Prieſtley.

* Dr. Prieſtley's Eſſay on the Firſt Principles of Government, ſect. viii. p. 153.

"The

"The *delivering over to Satan*, which St. Paul mentions as a puniſhment for the greateſt offence, that could be committed in the Chriſtian church, is not a delivering over to the *civil magiſtrate*, or to the executioner. In ſhort, all that the New Teſtament authoriſes a Chriſtian church, or its officers to do, is to exclude from their ſociety thoſe perſons, whom they deem unworthy of it."

* "In order," ſays Fleury, "to judge ſoundly upon this ſubject, we muſt begin by acquiring a proper knowledge of the real eſſential juriſdiction of the church, and diſtinguiſhing it carefully from the acceſſaries, which it has at different times received, either by conceſſions from ſovereigns or ſtates, or by uſages and cuſtoms inſenſibly introduced. We muſt alſo in candour allow, that in theſe latter ages the eccleſiaſtical and ſecular powers have frequently encroached upon each other." Theſe mutual and reciprocal uſurpations have proceeded from the inattention of both parties to their reſpective rights; and I ſcarcely feel it an exceſs of boldneſs to aſſert, that there never would have exiſted a ſerious or laſting difference or diſpute between church and ſtate, if their different and reſpective

Mutual incroachments of the civil and ſpiritual power.

* Fleury's Diſc. vii. ſur l'Hiſtoire Eccleſiaſtique, ſub. init.

rights, powers, and juriſdictions had been clearly ſet forth and aſcertained; and confident am I, that if ſuch incroachments had been avoided, the mutual reſpect for each other would have greatly increaſed the energy of their reſpective eſtabliſhments, and forwarded the ends of their reſpective inſtitutions.

The ſpiritual and civil powers often tend to the ſame end.

When I ſay, that theſe powers are of a different nature from each other, I do not aſſert, that they neceſſarily act in oppoſition, or in a different direction from each other: but their ſources of action are different. The church prohibits, and may puniſh the ſin of murder; the ſtate alſo prohibits and puniſhes murder as a crime; both prohibitions and puniſhments tend to the ſame end, though they differ eſſentially in their origin, means, and effects; and certainly nothing can be more laudable, than for human laws to be directed to the noble end of ſeconding the views and intentions of Almighty God upon his creatures, which in his goodneſs he has revealed to us. This is the true principle, upon which communities make civil eſtabliſhments of religion.

* "Our bleſſed Redeemer, in his all-wiſe

* The Caſe of the *Regale* and the *Pontificale* ſtated, printed in 1702, p. 19.

providence,

providence, foreſeeing the conſequence on both ſides, as he ſet up his church independent of all the powers of the earth, ſo he gave her no authority, that could poſſibly interfere with the civil powers. He altered nothing of the civil powers, but left them as he found them. He gave to Cæſar all that was Cæſar's; but the things of God, and the adminiſtration of the ſpiritual kingdom of heaven upon earth, that he left in the hands of his church, and accountable to none but himſelf. That as it is rebellion and uſurpation in the church to extend her commiſſion to *civil* power, ſo it is the higheſt ſacrilege and rebellion againſt Chriſt, for the civil power to extend their commiſſion into the ſpiritual kingdom, and uſurp upon the ſacred office. It is confounding of heaven and earth; and each may and ought to aſſiſt the other, without incroaching upon one another's province. The ſtate may protect and honour the church, without invading any part of her office; as the church ought to inforce obedience to the civil magiſtrate in all lawful things, without aſſuming any temporal power over him. This is the *concordat* and *agreement* betwixt the church and ſtate, upon what we call their incorporation; and there is no other incorporation but this; it

The church independent of all civil powers upon earth.

Incorporation of church and ſtate.

is not giving up their power to one another; that would be confuſion, and an eternal ſeed of debate and jealouſy of each other: the beſt way to keep up the agreement is, to preſerve their powers diſtinct and independent of each other."

Civil effects ſometimes miſtaken for ſpiritual.

Since the incorporation of the civil eſtabliſhment of religion with our conſtitution, many acts, orders, and regulations, which relate to or affect eccleſiaſtical or ſpiritual matters, are frequently repreſented as *eccleſiaſtical* or *ſpiritual*, which notwithſtanding in fact are purely temporal or civil. And although theſe powers, authorities, and juriſdictions may often appear compound, yet they are eaſily analized and reſolved into their original component parts, and the different effects are obviouſly traced to their primæval principle, or efficient cauſe. The unerring criterion to determine, if an act proceed from the real true *ſpiritual* juriſdiction or power of the church, is to examine if any *civil* or *legal* effect be annexed unto it; for a civil effect will indiſputably prove, that it proceeded from the civil ſanction or eſtabliſhment of religion by the ſtate; as all the effects of this civil eſtabliſhment muſt neceſſarily be in their nature *temporal* or *civil*. It will appear to any one, who conſiders cooly and

and impartially the words and tendency of the 24th of Henry VIII. for the *reſtraint of appeals*, that it was intended to produce no other effect, than an alteration in a part of the *civil* eſtabliſhment of religion; but this I ſhall conſider more fully hereafter.

24 Henry VIII. intended to alter the civil eſtabliſhment.

* " If we attend to the nature of the complaints, which the kingdom was perpetually making in the days of popery of the *Roman* uſurpations, we ſhall find, that they did not ſo much reſpect theſe uſurpations themſelves, as the perſon claiming and enjoying them. The grievance was, that appeals ſhould be made to *Rome*; that proviſions ſhould come from thence; in a word, that all cauſes ſhould be carried to a foreign tribunal, and that ſuch powers ſhould be exerciſed over the ſubjects of this realm by a foreign juriſdiction. The complaint was, that the pope exerciſed theſe powers, and not that the powers themſelves were exerciſed. So on the abolition of this ſupremacy, the act, that placed it in the perſon of the king would naturally be taken to transfer upon him all the privileges and pre-eminences, which had formerly belonged to it. And thus, though the act was ſo properly

Complaints of certain grievances in the civil eſtabliſhment of religion.

* Hurd's Dial. vol. ii. p. 279, & ſeq.

drawn as to make a difference in the two caſes, yet the people at large, and much more the king himſelf, would infer from the conceſſions, 'that the pope had uſurped his powers on the crown;' that therefore the crown had now a right to thoſe powers. And the circumſtance of this tranſlation's paſſing by act of parliament, does not alter the matter much, with regard to the king's notion of it. For in that time of danger, and for the greater ſecurity of his new power, he would chuſe to have that ratified and confirmed by ſtatute, which he firmly believed inherent in his perſon and dignity.

"*Then*, to ſee how far the current opinions of that time were favourable to the extenſion of the regal authority, on this alliance with the papal, we are to reflect, that however odious the adminiſtration of the pope's ſupremacy was become, moſt men had very high notions of the plenitude of his power, and the ſacredneſs of his perſon. "*Chriſt's vicar* upon earth," was an awful title, and had ſunk deep into the aſtoniſhed minds of the people. And though *Henry*'s pretenſions went no further than to aſſume that vicarial authority within his own kingdom, yet this limitation would not hinder them from conceiving of him much in the ſame way as of the pope

The king becoming the ſupreme head of the civil eſtabliſhment raiſed very exalted notions of the ſovereign.

pope himſelf. They, perhaps, had ſeen no difference, but for his want of the pope's *ſacerdotal* capacity. Yet even this defect was in ſome meaſure made up to him by his regal. So that between the majeſty of the kingly character, and the conſecration of his perſon by this myſterious endowment of the ſpiritual, it is eaſy to ſee how well prepared the minds of men were to allow him the exerciſe of any authority, to which he pretended."

And to what degree this ſpiritual character of head of the church operated in the minds of the people, we may underſtand from the language of men in ſtill later times, and even from the articles of our church, where the prerogative of the crown is ſaid to be that, which *godly kings* have always exerciſed; intimating, that this plenitude of power was inherent in the king, on account of that *ſpiritual and religious* character, with which, as head of the church, he was neceſſarily inveſted.

The ſupremacy of the civil eſtabliſhment transferred from the pope to the king.

It cannot be denied, but that the 24th of Henry VIII. operated as the tranſlation of a part of the headſhip of the civil eſtabliſhment of the church of England, from the pope to the ſovereign. The operative part of that act, in as much as it affected the conſtitutional church eſtabliſhment and royal prerogative,

gative, enacted, that all *cauſes teſtamentary, cauſes of matrimony and divorces, rights of tythes, oblations, and obventions,* ſhould be in future *heard, examined, diſcuſſed, clearly, finally, and definitively adjudged and determined within the king's juriſdiction and authority, and not elſewhere,* notwithſtanding *any foreign inhibitions, appeals, ſentences, ſummons, citations, ſuſpenſions, interdictions, excommunications, reſtraints, judgments, or any other proceſs or impediments* from the *See of Rome,* &c. Every ſort of proceſs there mentioned is, upon the very face it, the direct creature of the *civil eſtabliſhment* of the Roman Catholic religion in this nation; and if the nation choſe to ſeek their redreſs by reſorting to the legal courts of Rome upon certain ſubjects, I know of no authority above themſelves, that could check or prevent them from doing it; they were certainly bound to it by no article of the Roman catholic doctrine; and they were as free to deſiſt, as they had been to commence the uſage. I wonder much, that the nation did not ſooner eaſe themſelves of the expence, trouble, and delay of carrying their ſuits to ſo diſtant and foreign a judicature; and I wonder not leſs, that to this day they refer the deciſion of ſo many of their rights and liberties to what are now called the ſpiritual courts,

The ſubject matter of this act clearly relates to the civil eſtabliſhment.

The preſent ſpiritual courts like thoſe courts at Rome to which we formerly reſorted.

courts, which continue to be ruled and determined by the ſame civil Roman and canonical laws, to which they formerly reſorted. But I am concluded by the act of the majority, and I ſubmit with reſpectful deference to their juriſdiction.

Spiritual courts improperly ſo called.

In their nature, our ſpiritual or eccleſiaſtical courts at this day partake juſt as much of real *ſpiritual* juriſdiction, as the courts, to which our anceſtors were wont to reſort at Rome. If the judges or practitioners in either happened to be in orders, it was accidental, or at leaſt immaterial to their official juriſdiction; for they derived no more juriſdiction nor ſanction from their ordination, than our ſerjeants practiſing at common law did of old, who introduced the uſe of the coif, to conceal their clerical tonſures from the eyes of the public, as by canon they were prohibited to be either advocates or judges. Although the juriſdiction of their courts went to the deciſion of diſputes and litigations, ariſing out of or connected with ſubjects of a ſpiritual or eccleſiaſtical nature, yet the courts themſelves were purely civil or temporal, in as much as they were created, ſupported, and maintained merely by the civil or temporal power, and acquired their whole force and authority from the civil legiſlative body of that

that community, in which they were eſtabliſhed, or which choſe to ſubmit to their authority and juriſdiction. It would be equally abſurd to look for any divine miſſion, or authority, or ſpecial guidance of Almighty God, in the old judges of the conſiſtory or other courts of Rome, to which our anceſtors reſorted, as it would be ridiculous to expect a peculiar gift of divine grace and inſpiration in a modern ſurrogate or proctor of doctors commons, whither we now carry our ſuits of the like nature. The origin of theſe courts, and of the ſuits proſecuted in them, the objects of many ſuch ſuits (as wills, &c.) the method of carrying them on, the effects of their determination and judgments, all beſpeak them the direct creatures of a civil eſtabliſhment.

Excommunication of theſe courts no *real ſpiritual* excommunication.

The *excommunication*, which is pronounced in theſe courts, is as different from that ſpiritual excommunication, which I have before ſpoken of, as the power of the grand ſignior over his janiſſaries is different from that of a chriſtian biſhop over his dioceſe. No civil effect whatever can be produced by a mere *ſpiritual* excommunication, as I have before ſaid; and there can be no excommunication pronounced by theſe courts, which does not produce ſome civil effect.

Sir

Sir Edward Coke moſt curiouſly labours to prove, that whatever ſpiritual juriſdiction, right, power, or authority, either by uſurpation or right, was admitted or pretended to be exerciſed by the popes of Rome within this nation, was veſted in equal plenitude in her majeſty queen Elizabeth; alledges amongſt many other, this very ſingular reaſon. * "*Reges ſacro oleo uncti, ſunt ſpiritualis juriſdictionis capaces*; kings, being anointed with the ſacred oil, are capable of ſpiritual juriſdiction." I am ſurpriſed, that the fertile and diffuſed genius of Sir E. Coke has not enlarged upon this ſpiritualizing unction of his queen. In another part of his works, however, he recurs to a more ſolid ground for the temporal or civil powers interfering with the effects of eccleſiaſtical excommunication; for taking notice, that by the 25 Edward I. (c. iv.) the archbiſhops and biſhops were directed to pronounce ſentence of excommunication againſt all thoſe, that by word, deed, or council, ſhould do contrary to the thereby confirmed charters, or that in any point ſhould break or undo them, ſays, very conſiſtently and truly, † "This excom-

Sir Edward Coke's idea of the ſpiritual capacity of queen Elizabeth.

Whatever excommunication produces a civil effect ſubject to the power of parliament.

* 5 Rep. Caudrey's Caſe, xvi.

† 2 Inſtit. 527.

munication the prelates could not pronounce without warrant by authority of parliament, becauſe it concerned temporal cauſes." And I beg leave to add, upon the ſame principle, that no ſentence of excommunication that does produce a civil or temporal effect can be paſſed, or receive any force in this country, but by the authority or permiſſion of parliament. Upon this principle alſo, by one of the laws or conſtitutions of Clarendon, was the king's, or in his abſence his judge's conſent, made a previous requiſite, before any biſhop could excommunicate a tenant of the king holding in *capite*; becauſe as the municipal civil law of this country annexed certain civil penal and diſabling effects to ſuch an excommunication, ſo as to exclude the excommunicated perſon from the civil community, it was eſſentially neceſſary, that the community ſhould be conſenting to the loſs of its own member; and then *volenti non fit injuria*; *he who conſents is not injured.*

Spiritual ordination neceſſary for the miniſtery of the goſpel.

It may not be unacceptable to ſome of my readers, if I deſcribe what a real *ſpiritual court* is, that by the compariſon of it with thoſe courts, that have improperly obtained the appellation of *ſpiritual* courts both in this nation and elſewhere, their difference may be more clearly aſcertained. I write only for ſuch perſons as admit, that the ſpiritual ordination

nation of prieſts can alone qualify them for the miniſtry of the goſpel, and entitle them to that ſpiritual power and juriſdiction, which are requiſite for their ſacerdotal functions, and which are not even claimed by the laity*; and I have before ſaid, that the real ſpiritual power and juriſdiction left by Chriſt upon earth, had for their object the advancement of the faithful towards ſalvation, which could only be purſued by the means of the ſpiritual weapons of inſtruction, example, and puniſhment. † "This is unexceptionably admitted by all, who believe that chriſtianity is a revealed religion." * "For that no king nor ſtate can believe any religion, that depends upon their authority; becauſe then they muſt know, that the original of it is not divine. At leaſt, they can never believe chriſtianity, which only is a revealed religion, and therefore muſt come directly from heaven. And that, if they believe Chriſt did inſtitute a church upon earth, and gave

Chriſtianity a revealed religion.

* I believe few of our countrymen (except quakers, baptiſts, and independents) hold at preſent with Luther, that all people are prieſts, and capable of all ſpiritual functions, both men and women. Vid. *Luther. de Abrog. Miſſa, & de cap. Bab.*

† Caſe of the *Regale* and the *Pontifical.* p. 122.

her any commiſſion, they muſt believe ſuch commiſſion to be divine; which they cannot believe, if they think it in their power to limit it at their pleaſure, and make it dependent upon them. They cannot think, that Chriſt gave any ſuch *ſpiritual* commiſſion, unleſs they believe it to be ſuperior to them in ſpirituals."

What a real ſpiritual court is.

A real *ſpiritual* court then muſt conſiſt of ſuch perſons only, as are within this ſpiritual commiſſion, in right and by virtue of which they ſit, judge, or determine. Such a court can only have for objects of its deciſions, the faith, morals, inſtructions, and puniſhment of thoſe, who ſubmit voluntarily to the authority and juriſdiction of the court, or rather, who profeſs the religion, upon the principles of which the court is eſtabliſhed; for St. Paul, ſpeaking of the idolatrous gentiles of his time, who did not ſubmit to or profeſs the chriſtian religion, and writing thereupon to the lay Corinthians, who had embraced chriſtianity, ſays, * "For what have I to do to judge them alſo that are without? Do not you judge them that are within. But them that are without, God judgeth." And the only puniſhment, by which they can en-

* 1 Cor. v. ver. 12, 13.

force

force their deciſions, is the purely ſpiritual puniſhment of what I call *ſpiritual excommunication*, or delivery over to Satan, or deprivation of the communion of the faithful in the participation of the ſpiritual rites of the church. Such courts are what the Roman catholics call their œcumenical councils; they conſiſt of biſhops, who ſit as judges aſſiſted by prieſts as their theologians from all catholic countries; they are bounden to act independently, and without the controul or influence of any civil power whatſoever. When they pronounce and decide upon any point of faith and morals, their deciſions are poſitively binding and concluſive upon all thoſe, that are within their juriſdiction, and they are uſually enforced by the denunciation of *anathema* againſt thoſe, who ſhall deny or reſiſt them. But when they direct, recommend, or enjoin matter of eccleſiaſtical diſcipline, they know, that their judgments or decrees can only obtain force and take effect by the conſent of the civil power of different ſtates, and therefore they enforce them not by anathema; other means they have not. Thus it is notorious, that the diſcipline of the council of Trent was never admitted by France, and ſome other Roman catholic ſtates of Europe; and in thoſe

ſtates, into which it was admitted, it acquired its force and efficacy from the adoption of it by the civil power, without whoſe conſent it could not have been adopted at all. The *anathema* of the moſt numerous, learned, complete council, that ever did or ever can be convened, produces not of itſelf the ſmalleſt degree of civil effect in the perſon, who is anathematized, or thus ſpiritually excommunicated. It abridges as little the rights of an Engliſhman, as it incapacitated of old Hymeneus or Alexander to enjoy the civil benefits of their reſpective laws and conſtitutions.

Spiritual anathema produces no civil effect.

As I am endeavouring to aſcertain what that eccleſiaſtical ſupremacy is, which our conſtitution now veſts in the king, and it is evident, that the inveſtiture was made by act of parliament, I ſhall premiſe ſome general obſervations upon the nature of ſuch acts of parliament; for to my preſent purpoſe it is immaterial, whether the act of parliament, which veſted the headſhip or ſupremacy over the civil eſtabliſhment of religion wholly in king Henry the Eighth were declaratory of the old law, as Sir Edward Coke labours (I think in vain) to prove, or whether it were conſtitutive of a new law.

* "An act of parliament," says Sir Christopher Hatton, "is a law agreed upon by the king or queen of England, having legal authority, the lords spiritual and temporal, and the commons lawfully assembled, which taketh strength and life by the assent royal." An act of parliament therefore is an act of the highest human authority, which can be done in this or any other country; for as I have frequently before said, it is the complete act of the representatives of the community or people, from whom all human power and sovereignty originate. We are to consider an act of parliament, which gives any rights, or confers any privileges, or vests any authority in one or more individuals, like any other human act or instrument, which operates in a similar, though inferior manner. We must therefore consider first the right, power, and capacity of the granting party, who is commonly called the *grantor*; secondly the nature of the thing intended to be granted; thirdly the capacity or ability of the party, to whom the grant is intended to be made, who is commonly called the *grantee*; and fourthly the nature and operation of

Acts of parliament like other deeds of grant.

* A treatise concerning statutes, by Sir C. H. A. late chancellor of England, p. 2.

the act, deed, or inſtrument, by which the grant is intended to be effected.

The grantors are the community of this nation.

May grant what they can hold.

The grantors in the preſent inſtance are, properly ſpeaking, the whole community of this nation, and therefore are capable of granting whatever they are capable of holding; (that is) they are capable of deputing or delegating all thoſe rights and liberties to others, which they are capable of poſſeſſing and exerciſing themſelves. The thing ſuppoſed or intended to be granted, was the ſpiritual headſhip or ſupremacy of the religion, which the nation at that time voluntarily and freely profeſſed and followed: this was the Roman catholic religion. The nature therefore of the thing intended to be granted can only be properly known by the nature of the ſubmiſſion and ſubjection, which the members of that communion pay and acknowledge to the ſpiritual head of their church. I ſay then, without apprehenſion of being contradicted, that the Roman catholic church never did allow the ſpiritual ſupremacy of the pope of Rome upon any other ground or title, than that of his ſpiritual ordination and election, by virtue of which they believe and maintain him to be the regular and lawful ſucceſſor of St. Peter, and the repreſentative or vicegerent of Chriſt upon earth.

What the Roman catholics call the ſpiritual ſupremacy.

Now

Now it is evident and clear, that this title to that ſupremacy, which they thus acknowledged, could not be in the gift or diſpoſal of the Engliſh nation; for the Roman catholics never acknowledged any ſpiritual ſupremacy, which they did not hold or believe to extend, as the word *catholic* imports, over the univerſal congregation of chriſtians, who believed in the tenets of their faith. Now no lay individual of this nation, nor the whole community collectively, ever pretended to the power of conferring holy orders; nor have I ever met with a claim ſet up by the whole or any part of this nation, during the thouſand years, that the Roman catholic was the church eſtabliſhment of this country, to ſend deputies or repreſentatives to vote in conclave for the election of a Roman pontiff.

The real ſpiritual ſupremacy over the church not at the diſpoſal of the nation.

As clear then as it is, that no ſhare, portion, or degree of this merely *ſpiritual* ſupremacy was at the diſpoſal or in the gift of the Engliſh nation, ſo clear is it, that every particle of power, authority, and juriſdiction, which enters into it, or is derived from the civil eſtabliſhment of religion, was in the gift or diſpoſal of the community, as by *their* free aſſent alone it could ever have been adopted and ſettled. The headſhip therefore, or ſupremacy of the *civil* eſtabliſh-

The headſhip or ſupremacy of the civil eſtabliſhment is at the diſpoſal of the nation.

ment of religion muſt for ever in its nature be transferable or extinguiſhable by the community, which incorporate it with their civil conſtitution.

Neither infants nor women capable of ordination.

According to the doctrine of the church of England, every man is generally capable of receiving ordination or holy orders; but it muſt be from the hands of thoſe, who are qualified to confer them; and according to the ſame doctrine, no woman nor infant is capable of receiving ordination or holy orders. Though Sir Edward Coke ſhould conjure up his virgin queen, like a new goddeſs, from an ocean of his *ſpiritualizing chriſm*, ſhe would ſtill remain deſtitute of every particle of that *ſpiritual* power, authority, or juriſdiction, which were given to the apoſtles to guide, rule, govern, and preſerve the church of Chriſt. Yet though unanointed with this holy oil, nay even though not regenerated in the ſacred font of chriſtian baptiſm, * queen Elizabeth would have been fully capable of receiving all that power, authority, or juriſdiction over the *civil* eſtabliſhment of religion, which the community were capable of giving; and I have endeavoured

Even chriſtian baptiſm not neceſſary for the ſupreme head of the civil eſtabliſhment.

* It is ſingular, that the proof of chriſtian baptiſm is not required by the law of England to qualify a perſon for any benefit or advantage in the ſtate.

before

before to prove, that they could confer whatever could not be impoſed upon them without their conſent.

It is my indiſpenſible, and indeed my only duty, to conſider the operation of the laws now ſubſiſting, that affect the king's ſupremacy over the church of England, which I am happier to ſet forth in the words of others, than my own. * " Here one interpoſed and deſired to know, how all this would agree with our preſent *laws*, and ſince the *reformation*, and inſtanced the ſtatutes 25 H. VIII. c. 19. and 37 H. VIII. c. 17. &c. with the commiſſion, that archbiſhop *Cranmer* took out for his *biſhoprick* from Edw. VI. which is inſerted in biſhop *Burnet's* Hiſt. of the *Reformation*, part II. *Collect. Record.* to book i. n. 2. p. 90. and the like done by other *biſhops*, whereby they held their *biſhopricks* during pleaſure of the king, and owned to derive all their power, even *eccleſiaſtical*, from the crown, *velut à ſupremo capite, & omnium infra regnum noſtrum magiſtratuum fonte & ſcaturigine*, as from the *fountain* and *criginal* of it, &c. To this it was ſaid;

" That all this is to be underſtood only

The king's ſupremacy to be underſtood only of the civil power, &c.

* Caſe of the *Regale* and *Pontificat.* p. 60. & ſeq.

of the *civil* power and *authority*, which by the *laws* of the *land* were annexed to the *ſacred* office. As the *civil* juriſdiction, that is granted to the *biſhops courts*, to the *biſhops* themſelves, as *lords* of *parliament*, &c. to the *civil* penalties, which follow their *excommunication*, and the *legal* protection to their *ordinations*, and other acts of their *office*. And theſe are derived *onely* and *ſolely* from the king. Nothing of this was granted to the *apoſtles*, or the *biſhops* their *ſucceſſors* by Chriſt. And as the *ſtate* granted theſe, they may recall them, if there be ſufficient reaſon for it.

Exception of the *real ſpiritual* commiſſion of Chriſt to his miniſters.

" That in that very commiſſion before mentioned, which was given to *Cranmer* for his *biſhoprick*, there is an exception, *per & ultra ea, quæ tibi ex ſacris literis divinitus commiſſa eſſe dignoſcuntur*; (*i. e.*) *over and above thoſe powers and authorities, which the holy ſcriptures do teſtifie are given to thee by God.* Theſe the *king* did not take upon him to grant. But only what was *over and above theſe*, that is, the *protection* and *civil privileges* granted by the *ſtate*, which were annexed to *fortify* and *encourage* theſe. And take notice, that that of which the *king* is here called the *head* and *fountain*, is *omnium magiſtratuum*, of all the *magiſtracy* within his *dominions*, as well

well *eccleſiaſtical* as *temporal*. There is a *civil magiſtracy* annexed by the laws to the eccleſiaſtical juriſdiction. And of this only ought theſe expreſſions to be meant; becauſe we ſee the other, the *ſpiritual* authority, which in holy *ſcripture* is granted to the *church*, is expreſsly *excepted*. And that eccleſiaſtical authority, which in this *commiſſion* is ſaid to flow from the king, is, *juris dicendi authoritas, & quæcunque ad forum eccleſiaſticum pertinent*. That is, the *epiſcopal juriſdiction*, conſidered as a forum, a court eſtabliſhed by the *ſecular* power, and part of the *laws* of the land.

To what the king's ſupremacy confined.

"That in the ſaid *Hiſt.* of the *Reformation*, part I. in the addenda, n. v. p. 321, there is *a declaration made of the function and divine inſtitution of biſhops and prieſts*, ſubſcribed by the lord Cromwell, then vicegerent to king H. VIII. in eccleſiaſtical matters, by archbiſhop *Cranmer*, with the archbiſhop of *York*, eleven other *biſhops*, and twenty *divines* and *canoniſts*, declaring that the power of the keys, and other *church functions*, is formally diſtinct from the *civil* power, &c. And ibid. Collect. Rec. n. x. p. 177. There is the judgment of eight *biſhops* concerning the king's *ſupremacy*, whereof *Cranmer* the firſt aſſerting, that the commiſſion, which *Chriſt* gave his church had *no reſpect to kings or princes power*; but that the *church* had it by the *word of God, to which*

The power of the church is by the word of God.

which chriſtian princes acknowledge themſelves ſubject. They deny, that the commiſſion *Chriſt* gave to his *church* did extend to *civil power* over kings and princes. And they own, that the *civil* power was over *biſhops* and *prieſts*, as well as other ſubjects, that is, in civil matters; but they aſſert, *that biſhops and prieſts have the charge of ſouls, are the meſſengers of Chriſt to teach the truth of his goſpel, and to looſe and bind ſin, &c.; as Chriſt was the meſſenger of his Father*, which ſure was *independent* of all kings and powers upon earth."

No *ſpiritual* miniſterial power in queen Eliz. given by the act.

The act of parliament, by which the ſpiritual or eccleſiaſtical ſupremacy was reinveſted in queen Elizabeth, does not expreſs to give to the queen that plenitude of real *ſpiritual* power, which had ever been exerciſed in this or any other nation by the miniſters of the goſpel, but ſuch power only, as had been exerciſed within this realm in matters evidently comprized in or ariſing out of the *civil* eſtabliſhment of religion. The act contains not a word of the power of preaching, teaching, adminiſtering the ſacraments, or chaſtiſing by *ſpiritual* cenſures or excommunication; and to theſe inſtances alone are confined the true *ſpiritual* weapons, power, authority, or juriſdiction, by which the miniſters of God carry on the work of their divine

divine miſſion. * " And that alſo it may likewiſe pleaſe your highneſs, that it may be eſtabliſhed and enacted by the authority aforeſaid, that † ſuch juriſdiction, privileges, ſuperiorities, and preheminencies, ſpiritual and eccleſiaſtical, as by any ſpiritual or eccleſiaſtical power or authority *hath heretofore been, or may lawfully be exerciſed or uſed for the* viſitation of the eccleſiaſtical ſtate and perſons, and for reformation, order, and correction of the ſame, and of all manner of errors, hereſies, ſchiſms, abuſes, offences, contempts, and enormities, ſhall for ever by authority of this preſent parliament be united and annexed to the imperial crown of this realm.".

I preſume not to enter into a theological inveſtigation of the ſpiritual rights and prerogatives of the clergy in their different degrees, from the archbiſhop to the curate, but

The author's intent only to conſider what powers paſſed to the king by the different acts of parliament.

* 1 Eliz. c. 1. ſect. xvii.

† Particular attention is to be paid to theſe words of reference, which import not to give any abſolute *ſpiritual* or *eccleſiaſtical* juriſdiction, authority, or power, but ſuch only as *had been before, or lawfully might be exerciſed or uſed.* The effect therefore of this ſtatute can only be aſcertained by conſidering, firſt how far the kings of England were the heads of the civil eſtabliſhment of religion; and ſecondly how far lay perſons are capable of *real ſpiritual* juriſdiction.

only

only to diſcuſs, as a lawyer, the right, power, authority, or prerogative tranferred, annexed, or confirmed unto, or revived, veſted, or acknowledged in the perſon of our ſovereign, by different acts of parliament now in force. In this light only I wiſh, or rather claim a right to be judged; for if in handling theſe ſublime ſubjects, I have in any inſtance miſrepreſented or miſtated the theological and real principles of the divines of any church or religion whatſoever, I profeſs to ſpeak under correction, and openly diſavow any intention of miſtating, miſrepreſenting, or controverting their reſpective doctrines. In treating the connection of the church with the ſtate, the incorporation of a religious eſtabliſhment in the conſtitution and the adoption of certain political principles by different religious ſocieties and congregations, I have endeavoured, and ſhall continue to endeavour, ſtudiouſly to avoid entering into the internal evidence or merits of the different *religious* doctrines, which I ſhall have occaſion to mention, or refer to in the courſe of this work.

The authority of parliament concluſive in all that it has juriſdiction over, provided it contradict not the law of God.

After what I have already ſaid, I hope it will be thought uſeleſs to adduce arguments to prove, that every act of parliament is binding and concluſive upon each individual

of

of the community, provided the ſubject matter of the act be in its nature liable to the juriſdiction of human authority, and the thing enacted contradict not the law of God. Hence Lord Hardwicke ſaid, when he determined the great queſtion, that the canons of 1603 did not, *proprio vigore*, bind the laity; * " by reaſon of this repreſentation every man is ſaid to be party to, and the conſent of every ſubject is included in an act of parliament."

Natural to make the king the head of the civil eſtabliſhment.

As the community of this kingdom has thought proper to make a civil eſtabliſhment of religion, ſo has it naturally made the king the ſupreme head of that eſtabliſhment; but as the incorporation of a religious eſtabliſhment with the conſtitution is founded upon the aſſent of the community, ſo from that conſent muſt originate all the power or authority of the ſupreme head of that eſtabliſhment; and if it originated from the people, with the people muſt it for ever unalienably reſide. Whatever right, preeminence, juriſdiction, or authority are veſted in the king in this quality or capacity, are veſted in him by one and the ſame title, as all the other prerogatives of the crown; for it appears as clear, as the firſt propoſition of

King, qua reg. can have no ſpiritual power over the church of God.

* Strange's Reports, 1056, *Middleton* v. *Croft*.

Euclid,

Euclid, that the king never had and never can have (as king) any real true *ſpiritual* power or authority over the whole or any part of the church of Chriſt; but that over the *civil* eſtabliſhment of the church of England he ever had, and now has, and ever will have, juſt ſo much right, power, preeminence, authority, and juriſdiction, as the repreſentatives of the nation ſhall chuſe to admit and allow of.

The firſt or negative part of this aſſertion is made ſo clear by the declaration or act of the convocation in 1562, that I ſhall add nothing more unto it. * "For the biſhops and clergy, in their convocation of the year 1562, by the queen's authority and conſent, declared more plainly, viz. *That they gave not to their princeſs by virtue of the ſaid act or otherwiſe, either miniſtering of God's word or ſacraments, but that only prerogative, which they ſaw to have been given always to all godly princes in holy ſcripture by God himſelf; that is to ſay, that they ſhould rule all eſtates and degrees committed to their charge by God, whether they be eccleſiaſtical or temporal, and reſtrain with the civil ſword the ſtubborn and evil doers.*"

The countenance and ſupport, which the church receives from the ſtate were well ex-

* Gedol. Repertor. Can. p. 11.

preſſed

preſſed in the ſpeech which King Edgar of old made to the Engliſh clergy. * "I (ſaith he) have the ſword of Conſtantine, you the ſword of Peter; let us join our hands and ſwords, that we may drive out the lepers from the camp, and ſo purify the ſanctuary of the Lord. *Ego Conſtantini, vos Petri gladium habetis: jungamus dextras & gladium gladio copulemus, ut ejiciantur extra caſtra leproſi, & purgetur ſanctuarium Domini.*" In this junction of hands and weapons originated and conſiſts the alliance between church and ſtate.

The ſword of Conſtantine different from the ſword of Peter.

Some few inſtances will evince, as well as many, that the whole *eccleſiaſtical* juriſdiction, or power, which could produce any civil effect, acquired its eſtabliſhment only from the conſent of the people; for, from the days of our Saxon anceſtors, we ſee the biſhops acting jointly with the civil magiſtrates in the hundred courts, and probably judging by one and the ſame law; and we then find the eſtabliſhment of ſeparate eccleſiaſtical courts to judge by the civil and canon law made by parliamentary authority. † "Before the time of King *William* the *Conqueror*, all matters, as well ſpiritual as temporal, were determined in the *hundred courts*, where

Eccleſiaſtical court erected by the civil.

* Godolphin, p. 97.

† God. Rep. Can. p. 96.

was wont to ſit one biſhop and one temporal judge, called *aldermanus*; the one for matters of *ſpiritual*, the other of *temporal* cognizance; but that was altered by King *William* (and it ſeems by parliament; for it was by the conſent of biſhops, abbots, and all the chief perſons of the realm); for he ordained, that the biſhops or archdeacons ſhould not hold plea of the epiſcopal laws, and *quæ ad regimen animarum pertinent*, in the hundred, but by themſelves, and there adminiſter juſtice, not according to the law of the hundred, but according to the epiſcopal laws and canons." So from hence infers Nathaniel Bacon, in his diſcourſes upon the laws and government of England; * " their firſt foundation was laid by the civil power of a law in the time of William the firſt Norman king; yet the power of the pope and biſhop growing up together, they came to hold the power of the keys by a *divine right*, and ſo continued until theſe times of Henry VIII. wherein they have a retroſpect to the rock, from whence they were firſt hewn." And this ſame author, who ſeems but little biaſſed to popes, kings, and prelates, acknowledges, that the pope † " had holden a power, *ſupra ordinary*, over

* Part ii. p. 139.

† Ibid, p. 136.

all appeals, by gaining the definitive ſentence to the Roman ſee, by the ſpace of four hundred years." A right of this nature, continued for ſuch a length of time to be aſſented to by a free, powerful, and independent community can with no propriety be called an uſurpation. It was a grant made and confirmed to the biſhop of Rome by the nation, who were as free to revoke, as they had been to make it. I ſubmit to my readers, that we ſhould think and ſpeak of theſe appeals to the juridical courts of Rome, as Bacon does of the old forms of the eccleſiaſtical courts in this kingdom. * "Nevertheleſs the courts ſtill hold on their courſe, according to their old laws and cuſtoms, for their form of proceedings; ſome ſay by *preſcription*, yet more rightly by *permiſſion*." I therefore think myſelf bound to ſay, that ſuch appeals were at the time of the reformation made to Rome by the *ancient cuſtom* of the realm; elſe how could Bacon himſelf have owned, that † "the matter concerning the divorce of the Lady Catherine Dowager came before the pope by appeal, and there depended; the king himſelf alſo waiting upon that ſee for juſtice, and a definitive ſentence upon that matter; and

Appeals to Rome by the grant or conſent of the nation.

How theſe former appeals to Rome ſhould be conſidered.

* Nat. Bac. ubi ſupra, 138.

† Ibid. 137.

thereby acknowledged the pope's power *de facto.*"

I ſhall not attempt to ſift the motives, which induced King Henry VIII. and the nation to change this ancient cuſtom of the realm, though we ought not to loſe ſight of the ſteps or meaſures, which were purſued to effect it. * "In the year 1530, 22 Hen. VIII. the clergy being caught in a *premunire*, were willing to redeem their danger by a ſum of money, and to that end the clergy of the province of *Canterbury* beſtowed upon the king the ſum of 100,000l. to be paid by equal portions in the ſame year following; but the king would not ſo be ſatisfied, unleſs they would acknowledge him for the *ſupreme head on earth for the church of* England, which though it was hard meat, and would not eaſily go down amongſt them, yet it paſſed at laſt; for being *thoroughly debated in a ſynodical way*, both in the upper and lower houſes of *convocation*, they did *in fine* agree upon this expreſſion, *Cujus eccleſiæ (ſc. Anglicanæ) ſingularem protectorem, unicum & ſupremum dominum & (quantum per Chriſti leges licet) ſupremum caput ipſius majeſtatem recognoſcimus.* To this they all conſented, and ſubſcribed their hands,

The meaſures purſued to transfer the headſhip of the civil eſtabliſhment from the pope to the king.

* Heylin's Reformation of England juſtified, p. 5, 6.

and

and afterwards incorporated it into the *public* act or *inſtrument*, which was preſented to the king in the name of his clergy. On this ground were built the ſtatutes, prohibiting *all appeals to Rome*, and for *determining all eccleſiaſtical ſuits and controverſies within the kingdom*, 24 Hen. VIII. c. 12. that *for the manner of electing and conſecrating of archbiſhops and biſhops*, 25 Hen. VIII. c. 20. *and the prohibiting the payment of all impoſitions to the court of Rome; and for obtaining all ſuch diſpenſations from the ſee of Canterbury, which formerly were procured from the popes of Rome*, 25 Hen. VIII. c. 21; which laſt is built expreſsly upon this foundation, *that the king is the only ſupream head of the Church of* England, *and was ſo recognized by the prelates and clergy repreſenting the ſaid church in their convocation.* And on the very ſame foundation was the ſtatute raiſed, 26 Hen. VIII. c. 1. wherein the king is declared to be *the ſupream head of the church of* England, *and to have all honour and preheminences, which were annexed unto that title*, as by the act itſelf doth at full appear; which act being made (I ſpeak it from the act itſelf) only for *corroboration* and *confirmation* of that, which had been done in *the convocation*, did afterwards draw on the ſtatute for the tenths and firſt-fruits, as the point incident to the

headſhip or *ſupream authority*, 26 Hen. VIII. c. 3."

In this act of the 24th of Hen. VIII. it muſt be remarked, that although by the firſt part of it, the community reclaimed thoſe rights and privileges, which they had permitted the court of Rome to enjoy for ſo many centuries, which it was competent for them to do, yet by the ſecond part of the act, they appear to have exceeded their power, by enjoining the clergy, or the miniſters of the goſpel, to exerciſe their *ſpiritual* functions, notwithſtanding any ſuſpenſion, inhibition, interdiction, or excommunication from the ſee of Rome, although the Engliſh clergy, who were then in orders, acknowledged the biſhop of Rome as their ſpiritual ſuperior. Now as holy ordination by the impoſition of hands, according to the doctrine of the clergy then living, conferred a faculty or a power of a *pure ſpiritual* nature, ſo the obligation or lawfulneſs of exerciſing thoſe powers or faculties muſt eſſentially have depended upon the juriſdiction or authority of the real ſpiritual ſuperior, to whom the party ordained acknowledged ſubjection; as if for inſtance the excommunicated Simon, Hymeneus, or Alexander, had been in orders, no edict nor decree of the Roman emperor, or ſenate, or other

The lawfulneſs of exerciſing the ſacerdotal faculties depends upon the ſpiritual power that confers them.

other temporal power, could have juſtified, much leſs enjoined them to exerciſe their ſacerdotal miniſtry, whilſt they were diſabled from doing it lawfully by their ſpiritual excommunication. The power, which impoſed the diſability, could alone remove it. The excommunicated perſon was in no poſſible way civilly affected by the ſpiritual ſentence, conſequently before any civil tribunal he was completely *coram non judice*; but our parliament was to all intents a civil tribunal or power, therefore abſolutely incompetent to take any cognizance of matter *merely ſpiritual.* It will avail nothing to ſuggeſt, that the part, which the lords *ſpiritual* had in our legiſlation rendered it a juriſdiction competent to determine ſuch matter, ſince if every member in both houſes, as well as the king himſelf, were in holy orders, being the repreſentatives of the people, and drawing their legiſlative power from their delegation, they would be as little capable of deciding upon a mere ſpiritual matter in that capacity, as they now are; and for this very reaſon are all our *eccleſiaſtical* courts, as I have explained them, incompetent to do it.

Our parliament a civil judicature.

Nathaniel Bacon very pointedly marks what powers, in his opinion, this act of the 24th of Hen. VIII. veſted, or confirmed, or

recognized in the king. * " Firſt, it is a viſitatory, or a reforming power, which is executed by enquiry of offences againſt laws eſtabliſhed, and by executing ſuch laws. Secondly, it is an *ordinary juriſdiction*; for it is ſuch, as by any ſpiritual authority may be acted againſt irregularities; and thus the title *ſupreme ordinary* is conferred. Thirdly, it is ſuch a power as muſt be regulated by law, and in ſuch manner as by any ſpiritual authority may lawfully be reformed. It is not therefore any abſolute *arbitrary power*, for that belongs only to the ſupreme head in heaven; nor is it any *legiſlative power*; for ſo the law ſhould be the birth of this power, and his power could not then be regulated by the law; nor could every ordinary execute ſuch a power; nor did *Henry* VIII. ever make claim to any ſuch power, though he loved to be much truſted. Laſtly, this power was ſuch a power, as was gained formerly from the king by foreign uſurpation, which muſt be intended *de rebus licitis*, and once in poſſeſſion of the crown, or in right thereto belonging according to the law; for the king hath no power thereby to confer church-livings by proviſorſhip, or to carry the keys, and turn the infallible chair

* Bacon, ubi ſupra.

into

into an infallible throne. In brief, this power was ſuch as the king hath in the commonwealth; neither legiſlative, nor abſolute in the executive, but in order to the unity and peace of the kingdom: this was the right of the crown, which was ever claimed, but not enjoyed further, than the *Engliſh* ſceptre was able to match the *Romiſh* keys; and now the ſame being reſtored by act of parliament, is alſo confirmed by an oath injoined to be taken by the people, binding them to *acknowledge the king under God ſupreme head on earth of the church of* England, Ireland, and *the king's dominions*, in oppoſition to all foreign juriſdiction; and laſtly, by a law, which bound all the people to maintain the king's title of *defender of the faith, and of the church of* England *and* Ireland, *in earth the ſupreme head*, under the peril of *treaſon* in every one, that ſhall attempt to deprive the crown of that title."

Oath of ſupremacy.

I ſcarcely need remind my reader, that the only human authority, to which an Engliſh ſubject is bound to ſubmit, are the common law and the ſtatute law of the realm; the legal deciſions of our common law courts make a part of the common law; and I am therefore peculiarly happy in being able to proceed under this authoritative ſanction in

The deciſions of our common law courts make a part of our common law.

my inquiries into the nature and extent of that right, power, preeminence, dignity, and authority ariſing out of the civil eſtabliſhment of religion, which the conſtitution annexes to our ſovereign lord the king, as the ſupreme head of ſuch eſtabliſhment. If any ſituation can diſplay the plenitude of power, which his majeſty poſſeſſes, as the *ſupreme head of the church of England*, it certainly is, when he acts as the head of the convocation of the biſhops and clergy regularly convened.

How far the convocation can make laws.

Concerning the authority of theſe canons, and conſequently the power of convocation to make laws with the royal aſſent and approbation, great diſputes have been formerly carried on, but the matter ſeems now finally ſettled in the caſe * of *Middleton* and *Croft*, Mich. 10 Geo. II. in which lord Hardwicke, then lord chief juſtice of the king's bench, delivered the reſolution of the court to this effect: "One point in this cauſe is, whether the makers of the canons of 1603, had a power to bind the laity? They were made by the biſhops and clergy in convocation aſſembled by virtue of the king's writ, and confirmed by his charter un-

* Strange's Rep. 1056.

der

der the great ſeal, but the defect objected to them is, that they were never confirmed by parliament; and for this reaſon, though they bind the clergy of the realm, yet they cannot bind the laity, for want of a parliamentary confirmation. And ſome of the counſel in their argument ſeemed to admit it, by putting the caſe upon the foot of the ancient canon law; but as the other counſel, who argued on that ſide, did not give it up, it is become neceſſary to examine and determine a point of ſo great moment to the conſtitution of England, in order to ſettle the law thereupon; and on the beſt conſideration we have been able to give it, we are all of opinion, that, *proprio vigore*, the canons of 1603 do not bind the laity; I ſay, *proprio vigore*, becauſe ſome of them are only declaratory of the ancient canon law.

Canons do not, *proprio vigore*, bind the laity.

" Upon this important queſtion therefore, it is proper for judges to proceed upon ſurer foundations, which are the general nature and fundamental principles of our conſtitution, acts of parliament, and reſolutions and judicial opinions in our books, and from theſe to draw our concluſions.

" No new law can be made to bind the whole people of this land, but by the king, with the advice and conſent of both houſes of

No law can be made binding but by parliament.

of parliament, and by their united authority. Neither the king alone, nor the king with the concurrence of any particular number or order of men, hath this high power. The binding force of theſe acts of parliament ariſes from that prerogative, which is in the king our ſovereign liege lord; from that perſonal right, which is inherent in the peers and lords of parliament to bind themſelves, and their heirs and ſucceſſors in their honours and dignities; from the delegated power veſted in the commons as repreſentatives of the people: by reaſon of this repreſentation every man is ſaid to be party to, and the conſent of every ſubject is included in an act of parliament.

" But in canons made in convocation, and confirmed by the crown only, all theſe requiſites are wanting, except the regal aſſent; there is no intervention of the peers of the realm, nor any repreſentation of the commons."

Canons may acquire the force of laws by ſufferance, recognition, or confirmation.

It is to be obſerved, that lord Hardwicke marks a difference between the new canons of 1603, and ſuch as are declaratory of the ancient common law; becauſe the former never having been confirmed by parliament, muſt ſtand upon their own ſtrength only, *proprio vigore*; whereas the latter may have acquired

acquired ſtrength from an expreſs or implied confirmation by parliament, long uſage, ſufferance, acquieſcence, or aſſent. This he explains by the example of the Roman empire after it became Chriſtian. * "Hence ariſes the diſtinction between canons made in ancient councils, confirmed by the empire after it became Chriſtian, and thoſe made here. The emperor, according to Juſtinian and the digeſt, had a legiſlative power; and when they received his confirmation, they had their full authority; but this is not the caſe here; the crown hath not the full legiſlative power; and it is therefore rightly ſaid in Salkeld. 673, that the king's conſent to a canon in *re eccleſiaſtica* makes it a law to bind the clergy, but not the laity; and no one can ſay that the conſent of the people is included in the royal confirmation."

No canon can become binding till confirmed by the legiſlative power.

He ſays moreover, "that it would be abſurd that the clergy ſhould have it in their power to enact new laws, for diſobeying which the laity ſhall incur the penalty of excommunication, which is to be carried into execution by the loſs of their liberty, and a diſability to ſue for and diſpoſe of their perſonal eſtates; this would certainly be to affect

* Strange's Rep. 1056.

the

The clergy by ſynodical acts cannot charge the laity.

the laity in their property in a very high degree; and yet it is admitted, that the clergy by ſynodical acts cannot charge the property of the laity." And his lordſhip further remarks, and ſeems to lay it down as a received axiom, "that the true uſe of theſe confirmations (of canons) in parliament was the extenſion of ſuch conſtitutions over the laity, who would otherwiſe not be bound."

Headſhip or ſupremacy of the civil eſtabliſhment tranſlated from the pope to the king.

It appears therefore clear, that even upon eccleſiaſtical or ſpiritual matters, there is no other legiſlative power in this ſtate, but that of parliament; and no power can civilly bind the people but the legiſlative. Now all ſuch right, power, preeminence, dignity, juriſdiction, and authority, which could poſſibly produce any civil effect in this country, were by this act of tranſlation veſted or recognized in future in the king alone, as by the free aſſent of the people had in great meaſure been allowed for many centuries to the pope. "This tranſlation," ſays the biſhop of Worceſter, * "was the circumſtance of all others, which moſt favoured the ſudden growth of the imperial power in this nation." The arbitrary and reſtleſs diſpoſition of this monarch, and the ſervile pliancy of his people,

* Mor. & Pol. Dial. vol. ii. p. 275.

equally

equally conſpired together to raiſe that thunder ſtorm under the Tudors, that burſt with ſuch direful effects upon the heads of the Stuarts.

* " We ſee then, as I have ſaid, how conveniently the minds of men were prepared to acquieſce in Henry's uſurped prerogative. And it is well known, that this prince was not of a temper to balk his expectations. The ſequel of his reign ſhews, that he took himſelf to be inveſted with the whole eccleſiaſtical power, *legiſlative* as well as executive; nay, that he was willing to extend his acknowledged right of ſupremacy, even to the ancient papal infallibility, as appears from his ſovereign deciſions in all matters of faith and doctrine."

King Henry's exorbitant notions of his own ſupremacy.

In order to render this headſhip or ſupremacy of the king over the civil eſtabliſhment of religion, which had formerly been allowed in great meaſure to the pope the more palatable to the nation, it was thought adviſeable to procure an act of ſubmiſſion from the clergy themſelves; for although the actual conſent of each individual clergyman, as a member of the community, was included in the act of parliament, yet inaſmuch

The act of the ſubmiſſion of the clergy procured to render the tranſlation palatable to the public.

* Mor. & Pol. Dial. vol. ii. p. 283.

as the clergy were in ſome ſenſes a body diſtinguiſhed and divided from the laity, it was thought, that their ſubmiſſion might afford ſatisfaction and conviction to the wavering and leſs informed part of the community, though it could in fact add no degree either of coercion or obligation to the act of parliament, which without any ſuch ſpecial ſubmiſſion of the clergy, would have been equally binding and concluſive upon the nation. As upon this ſubmiſſion of the clergy were founded and ſettled the rights and powers, as well as the duties and obligations both of the convocation and of the king as their ſupreme head, it will not perhaps be unacceptable to my readers to ſee that tranſaction repreſented by a very learned and reſpectable divine of the eſtabliſhed church.

What this ſubmiſſion of the clergy was.

* "The ſecond ſtep to the *ejection of the pope* was the *ſubmiſſion of the clergy* to the ſaid king *Henry*, whom they had recognizanced for their ſupream head. And this was firſt concluded on in the *convocation*, before it was propoſed or agitated in the *houſes of parliament*, and was recommended only to the care of the *parliament*, that it might have the force of a law by a civil ſanction. The

* Dr. Heylin's Reformation of England juſtified, p. 6 & 7.

whole

whole debate, with all the traverſes and emergent difficulties, which appeared therein, are ſpecified at large in the records of convocation, *anno* 1532. But being you have not opportunity to conſult thoſe records, I ſhall prove it by the *act of parliament*, called commonly *the Act of Submiſſion of the Clergy*; but bearing this title in the *abridgment of the ſtatutes* ſet out by *Poulton*, *that the clergy in their* convocations *ſhall enact no conſtitutions without the king's aſſent*. In which it is premiſed for granted, that the clergy of the realm of *England* had not only *acknowledged, according to the truth*, that the convocation of the ſame clergy *is, always hath been, and ought to be aſſembled always by the king's writ*; *but alſo ſubmitting themſelves to the king's majeſty, had promiſed, in verbo ſacerdotis, that they would never from henceforth preſume to attempt, alleadge, claim, or put in ure, enact, promulge, or execute any new canons, conſtitututions, ordinances provincial, or other, or by whatſoever other name they ſhall be called in the* convocation, *unleſs the king's moſt royal aſſent may to them be had*, to make, promulge, and execute the ſame; and that his majeſty do give his moſt royal aſſent and authority in that behalf.

Parliament act upon this act of ſubmiſſion of the clergy.

" Upon which ground-work of the clergies, the parliament ſhortly after built this ſuperſtructure to the ſame effect, viz.

" *That none of the ſaid clergy from henceforth ſhould preſume to attempt, alleadge, claim, or put in ure, any conſtitutions, or ordinances provincial, or ſynodales, or any other canons; nor ſhall enact, promulge, or execute any ſuch canons, conſtitutions, or ordinances provincial, (by whatſoever name or names they may be called) in their* convocations *in time coming (which always ſhall be aſſembled by the king's writ) unleſs the ſame clergy may have the king's moſt royal aſſent and licence to make, promulge, and execute ſuch* canons, conſtitutions, *and* ordinances provincial *or* ſynodical, *upon pain of every one of the ſaid* clergy *doing the contrary to this act, and thereof convicted, to ſuffer impriſonment, and make fine at the king's will,* 25 Hen. VIII. c. 19.

" So that the ſtatute in effect is no more than this: an act to bind the clergy to perform their promiſe, to keep them faſt unto their word for the time to come, that no new canon ſhould be made in the times ſucceeding in the favour of the pope, or by his authority, or to the diminution of the king's *royal prerogative,* or contrary to the laws and

ſtatutes

ſtatutes of this realm of *England*, as many *papal conſtitutions* were in the former ages; which ſtatute I deſire you to take notice of, becauſe it is the rule and meaſure of the church's power in making canons, conſtitutions, or whatſoever elſe you ſhall pleaſe to call them, in their convocations.

" The third and final act, conducing to the pope's ejection, was an *act of parliament*, 28 Hen. VIII. c. 10. intituled, *An act extinguiſhing the authority of the biſhop of* Rome; by which it was enacted, *that if any perſon ſhould extol the authority of the biſhop of* Rome, he ſhould incur *the penalty of a præmunire; that every officer, both eccleſiaſtical and lay, ſhould be ſworn to renounce the ſaid biſhop and his authority, and to reſiſt it to his* power, *and to repute any oath formerly taken in maintenance of the ſaid biſhop, or his authority, to be void; and finally, that the refuſal of the ſaid oath ſhould be judged high treaſon:* but this was alſo uſhered in by the determination firſt, and after by the practice of all the clergy; for in the year 1534, which was two years before the paſſing of this act, the king had ſent this propoſition to be agitated in both *univerſities*, and in the greateſt and moſt famous *monaſteries* of the kingdom; that is to ſay, *An aliquid authoritatis in hoc regno Angliæ*

The opinion taken of the univerſities and monaſteries upon the pope's ſupremacy.

pontifici Romano, de jure competat, pluſquam alii cuicunque epiſcopo extero? By whom it was determined negatively, that the biſhop of *Rome* had no more power of right in the kingdom of *England*, than any other foreign biſhop. Which being teſtified and returned under the hands and ſeals reſpectively (the originals whereof are ſtill remaining in the library of Sir Robert Cotton) was a good preamble to the biſhops and the reſt of the clergy aſſembled in their convocation to conclude the like; and ſo accordingly they did, and made *an inſtrument* thereof ſubſcribed by the hands of all the biſhops, and others of the clergy, and afterwards confirmed the ſame by their corporal oaths."

The queſtion propoſed was captious.

It muſt be obſerved, that the queſtion, which this learned divine informs us was agitated and reſolved by both univerſities, and the greateſt and moſt famous monaſteries of the kingdom, was captious upon the face of it, and might have been underſtood to relate to or concern the civil eſtabliſhment of religion in England, and not that real ſpiritual primacy or vicegerency of Chriſt over the chriſtian church, which, as Roman catholics, they acknowledged in the pope. For when it is aſked, *whether the pope of Rome hath of right any more authority within the kingdom of England,*

land, than any other foreign biſhop? I anſwer, that this neceſſarily involves the idea of the civil eſtabliſhment of the church of England, which alone could affect the civil or temporal power of the ſtate; for the pope of Rome, or any other foreign biſhop, can only be repreſented as *foreign*, in as much as he receives an authority from ſome other nation or community, than that of England; but whatever authority can be given by a nation or a lay community, can be no other than *temporal* or *civil*, as I have before ſhewn; therefore this queſtion in ſtrictneſs ought not to be underſtood of mere *ſpiritual* authority, or in fact of that authority or juriſdiction, which the Roman catholic church allows to the pope of Rome, as to her *ſpiritual* ſupreme head. I ſhould therefore think this queſtion *politically, legally, philoſophically, and theologically* reſolved by the following anſwer: The kingdom of England acknowledges no independent right, either in the pope or any other biſhop, to exerciſe any authority whatever, that can produce, *proprio vigore*, a *civil* effect upon the ſubjects of this realm. I have before ſhewn, or endeavoured to ſhew, that all power or juriſdiction, which produces civil effects, cannot be purely *ſpiritual*; and therefore I conclude, that the negative an-

The true meaning of the queſtion and its ſolution.

ſwer to this queſtion, if rightly and fairly underſtood, though it were a renunciation of the pope's power, authority, or juriſdiction over the civil eſtabliſhment of the church of England, againſt the conſent of the community, or without an act of parliament, yet it left untouched that real *ſpiritual primacy* over the church of Chriſt, which the Roman catholics of all ages, and of all countries, have made the bond of their communion with the ſee of Rome. For according to their doctrine, the church, which they maintain to be *catholic* or univerſal, cannot by poſſibility be diſſected into political or geographical diviſions; the term *foreign* therefore is not applicable in a ſpiritual or eccleſiaſtical ſenſe, by one member of their church to another; much leſs is it applicable to the head of their church, whom they look upon as the common father of all in Chriſt, whoſe ſacred functions and character of *ſpiritual primate*, according to them, exclude all diverſity of nations, and unite all the members of the church in one family or communion*. As St.

* I have ſaid thus much upon this ſubject, to ſhew how greatly owing to miſapprehenſion and miſrepreſentation are all the heated controverſies between the church of England and the church of Rome, about the ſpiritual *ſupremacy* of the king of England. Perhaps few

St. Peter at Rome could not in the primitive church have been called a foreign biſhop, either by a Grecian, Idumean, or Roman chriſtian. I have ſpoken more largely upon this doctrine, becauſe it was the belief of the univerſities and monaſteries, to whom this queſtion was propoſed; and therefore the anſwer to it will be the more fairly underſtood by the expoſition of the doctrine of thoſe, who gave it.

The true conſtitutional ſenſe of the oath of ſupremacy.

In order to form a perfectly unbiaſſed and true judgment of the opinion given by theſe divines upon this queſtion of king Henry's, we muſt fully enter into the ſpirit, influence, and even prejudices of the perſons, who gave it. As Roman catholics they were from principle tenaciouſly anxious to avoid any innovation in their doctrine or faith, particularly at a time when a ſpirit of innovation ſeemed to have pervaded moſt countries in Europe. The clergy were even more than the laity in awe and dread of the arbitrary and deſpotic diſpoſition of their ſovereign; and from a mean ſelf-intereſted policy, which

Temporizing pliancy of the divines under king Henry VIII.

few Roman catholics would refuſe to ſwear to it, in the true conſtitutional ſenſe of its actual exiſtence, were it unequivocally expreſſed, that the king is the ſupreme head of the *civil* eſtabliſhment of the church of England.

too frequently actuates mankind, they evidently attempted to gratify the dreadful ambition of king Henry, without making an expreſs renunciation of any article of their own religious belief. For if the quære propoſed by the king related only to any right, power, authority, or juriſdiction, the exerciſe of which could produce a civil effect in this country, it is evident, that as ſuch civil effect could not have been produced without the aſſent or permiſſion of this community, ſo the right to any power, that could produce it, could neither exiſt in the biſhop of Rome, nor in any other biſhop of chriſtendom, independently of the community, which was to ſubmit to the civil effects of that power or juriſdiction.

If therefore theſe divines, under a reſervation or ſalvo to their conſciences, expreſſed their opinion only of the ſupremacy or headſhip of the civil eſtabliſhment of religion in this country, it cannot be ſaid, that their anſwer deviated from any principle of the faith and doctrine, which they then profeſſed; but they were called upon in candor ſo clearly to expreſs the difference betwixt the real ſpiritual juriſdiction of the church, and the juriſdiction and authority of the civil eſtabliſhment of religion in this country, that

that the expoſition of the real ſtate of the queſtion to the nation would completely do away the inſidious and captious purport of the queſtion put by the king. For it cannot be denied, that as for nearly a thouſand years the headſhip or ſupremacy of the civil eſtabliſhment of religion in this country had been veſted by the act of the nation principally in the biſhop of Rome, in whom they alſo admitted the real ſpiritual ſupremacy of their church to ſubſiſt, it was not eaſy for the community at large to diſtinguiſh between theſe two capacities in the ſame perſon; and thus I account for the purport and tendency of all the acts of parliament upon this ſubject being, particularly in thoſe times of heat and animoſity, miſconceived and miſrepreſented.

The reaſon why moſt acts relating to the ſupremacy miſrepreſented.

That the civil eſtabliſhment of religion is merely acceſſary to the religion itſelf, will not, I preſume, be denied; for were it eſſential to a religion, that religion could no where exiſt, where a civil eſtabliſhment was wanting. This is emphatically exemplified in our own country at this hour; for the Roman catholic religion, which the divines, of whoſe opinion I am now ſpeaking profeſſed, is ſtill alſo profeſſed and kept up by ſome individuals in this country, without the counte-

A civil eſtabliſhment not eſſential to religion.

Exemplified by the ſtate of the Roman catholics in this country at preſent.

nance or ſupport of any civil ſanction or eſtabliſhment whatever. And if the preſent Roman catholics of England ſhould pretend, that the religion, which they now profeſs, differs in any one eſſential point from that religion, which their anceſtors profeſſed whilſt the Roman catholic religion was countenanced and eſtabliſhed by the law of this country, they will immediately give up their diſtinctive characteriſtic, and boaſted glory of *unity*, *univerſality*, *and irreformability*. At this day they ſubmit, as they formerly did, to the ſpiritual ſupremacy of the biſhop of Rome; but they cannot admit him to be the ſupreme head of the civil eſtabliſhment of religion in this country, becauſe their religion has neither civil ſanction nor eſtabliſhment in it. They ſubmit to the *ſpiritual* power and juriſdiction of their own biſhops, who are not now recognized by the ſtate, as fully as they did, when they were in poſſeſſion of the temporalities, and other civil advantages of Engliſh biſhopricks. They receive their ſacrament of matrimony from their own prieſts as fully at preſent, as they formerly did, though no civil effect be produced by the adminiſtration of it. In a word, their biſhops and prieſts are now endowed with the ſame ſpiritual powers of preaching, teaching,

ing, and adminiſtering the word of God to their flocks, as they formerly were, when the conſtitution acknowledged them as a diſtinct part of the community, and inveſted them with political and other civil capacities and advantages.

The rights of the king, as ſupreme head of the civil eſtabliſhment of the church of England.

In virtue of this ſpiritual headſhip or ſupremacy of the king over the civil eſtabliſhment of religion, which the conſtitution now gives him, he has authority * "to convene, prorogue, reſtrain, regulate, and diſſolve all eccleſiaſtical ſynods or conventions; he has the right of nomination to vacant biſhopricks, and certain other eccleſiaſtical preferments, and is the dernier reſort in all eccleſiaſtical cauſes, an appeal lying ultimately to him in chancery from the ſentence of every eccleſiaſtical judge."

Whether the power of appointing argue a divine miſſion.

It may be urged, that if the king be enabled to appoint to vacant biſhopricks, he muſt neceſſarily be legally authorized and impowered to confer a ſpiritual power or divine miſſion; for the ſpiritual power of a Chriſtian biſhop can only be limited in its extent of juriſdiction by a power, that can controul him in his *ſpiritual* capacity; but if the king can controul or limit the *ſpiritual*

* Black. Com. b. i. c. 7. ſect. 5.

juriſdiction

juriſdiction of a biſhop, the biſhop is ſubject to the king in his real ſpiritual character; and therefore by the conſtitution of our laws, the king is more than merely the ſupreme head of the *civil* eſtabliſhment of religion. In anſwer to this it may be ſaid, that the king's appointment to a biſhoprick operates in a ſimilar manner, as does the preſentation of a lay patron to a living; the clerk appointed cannot acquire any cure of ſouls or ſpiritual charge, if he be not properly ordained; and his juriſdiction no more exceeds the limits of his pariſh, than that of a biſhop does thoſe of his dioceſe; yet from the alliance between church and ſtate, where there is a civil eſtabliſhment of religion, the civil and the ſpiritual power ſo far accommodate themſelves to each other, as to avoid any confuſion from their reſpective juriſdictions; and this has been always attended to in all Chriſtian countries, where the Chriſtian religion had acquired a civil eſtabliſhment, as it is clearly and conſtitutionally explained in a book publiſhed in the year 1701, commonly attributed to biſhop Fleetwood.

Original diſtribution of dioceſes.

* " The apoſtle's commiſſion reaching to

* Account of Church Government and Governors, p. 39, & ſeq.

§ all

all parts of the world, and they being commanded to *make all nations diſciples, to go into all the world, and to preach the goſpel to every creature,* (Matt. xviii. 19.) could not be long fixed to any one place; yet it was neceſſary that *paſtors* and *teachers* ſhould be ſettled among all believers, who might continue to inſtruct and teach them, to offer up prayers for them in the public aſſemblies, and to adminiſter the ſacrament to them. Hereupon they ordained them elders in every church; (Acts i. 14. 23.) that is, a biſhop with a competent number of preſbyters and deacons to aſſiſt him, as will be evident from what ſhall be ſaid hereafter. (Heb. xiii. 7. 17.) Theſe were rulers of the church wherein they were placed, and the people were commanded to obey them. But though they were rulers, yet their authority extended not over the whole church, but only that flock over which the *Holy Ghoſt* (Acts xx. 28.) had made them *overſeers* or *biſhops*. They were fixed to a particular place, and the ſpiritual government of all perſons within thoſe limits was committed to them; and in this diviſion into particular diſtricts (which was prudential at the apoſtles diſcretion) the general diviſion of the empire was obſerved. It was neceſſary that particular churches

ſhould

ſhould be circumſcribed within certain bounds; but it was indifferent where thoſe boundaries ſhould be fixed. The apoſtles therefore took the limits already laid out for them, and accordingly ſettled churches, and either (Tit. i. 1. 5.) ordained themſelves, or appointed others to ordain elders in every city, or city by city, as Dr. Hammond renders it. And herein they thought it expedient ſtrictly to obſerve the imperial diviſion; ſo that the council of Calcedon decreed, (6 Can. 17.) that if the emperor ſhould change the condition of a city by his authority, the order of the pariſh churches ſhould follow the civil conſtitution. Thus the power of theſe elders was confined within the compaſs of that particular city and its territories, where they were ordained to miniſter; and all within thoſe limits were under their care and juriſdiction. They were, indeed, biſhops and preſbyters of the univerſal church, (for the true church is but one and the ſame in all parts of the world) but for the ſake of decency and order, and that each paſtor might know his own peculiar flock, it was neceſſary, that the catholic church ſhould be divided into particular churches." For * " whilſt our Sa-

The ſpiritual diviſion generally accommodated to the civil diviſion of dioceſes.

* Account of Church Government and Governors, p. 36, 37.

viour

viour lived on earth, he ruled and governed his church perſonally; and though the apoſtles could preach, and baptize, and pronounce remiſſion of ſins, which is the prieſts office now, yet could they not perform the functions of the epiſcopal office, to give others a commiſſion to preach the goſpel. But when Chriſt was riſen, and ready to aſcend into heaven, then he enlarged the apoſtolic power, and gave them authority to collect and ſettle churches, and to give commiſſions to others, as he himſelf had done. *As my Father hath ſent me*, ſays he, *even ſo I ſend you. And when he had ſaid this, he breathed on them, ſaying, receive ye the Holy Ghoſt.* (Joh. xx. 21.)"

CHAP.

CHAP. XI.

OF THE PREROGATIVES OF THE CROWN.

More diſputes about the title to the prerogatives, than about the prerogatives themſelves.

IT may be generally remarked, that the difference or diſpute between moſt writers, is not ſo much about the prerogatives of the crown, as about the right and title to them. I have already endeavoured to render my opinion upon this matter unequivocal and explicit; and the conſequence of that opinion is, that as a member of the community, I entertain the moſt dutiful attachment to the perſon, in whom the community veſts the executive power of the legiſlature, and the moſt awful and reſpectful deference for the diſtinguiſhed and exalted properties, prerogatives, and powers, with which the community has found it adviſeable to dignify him. Mr. Acherley, in a ſort of allegorical expoſition or direction of what this ſupreme head of the body ought to be, ſays, * "That the firſt and moſt excellent eſtate, or ſupreme head of this great body, ſhould be a political ſupreme office, to guide and conduct the reſt, and, for that reaſon, ſhould be raiſed

* Britannic Conſtitution, p. 39.

above

above the reſt, which ſhould be the *glory of the nation*; and that, to add *majeſty*, it ſhould be crowned with a *crown* of pure gold, adorned with the richeſt gems, as *caput regni*; that to this crown there ſhould be annexed royal and *ſovereign rights* and *prerogatives*, which ſhould give it a luſtre and a veneration ſuitable to the moſt *excellent* dignity; that the ſingle *perſon*, who ſhould be declared ſupreme governor or head, to execute and adminiſter this higheſt office, and to wear this crown, ſhould be ſtiled *king*, and ſhould have ſuch honours paid him, as are due to royal and *imperial majeſty*; and that a *throne* ſhould be raiſed for him, on which he ſhould ſit, when he performs the higheſt acts of government; and that his *perſon* ſhould be exempted from all coercive and offenſive acts of violence whatſoever, upon or for any reaſon or pretence of any reaſon whatſoever; and that the *firſt perſon*, who ſhould be declared king, and all ſucceeding *kings*, ſhould, at or ſoon after his aſſuming to exerciſe the regal power, be crowned with the greateſt ſolemnity." And in another part of the ſame work, he deſcribes the monarchy or regal office in this manner: * "The bu-

The general prerogatives of the crown.

* Acherley's Brit. Conſtit. p. 59.

ſineſs

The end of our monarchy.

ſineſs and end of this *office* was to exerciſe and adminiſter the regal power in guiding and governing the people of this nation, for the good of the whole body, in ſuch manner as ſhould be agreeable, and according to the rules and laws, which for that purpoſe ſhould be agreed on and preſcribed; and to aſſent and agree to the making ſuch new laws, and to the changing and altering ſuch old ones, as the two eſtates of lords and commons ſhall find neceſſary, and prepare, for the good government and protection of the people and nation; and that therefore the monarch, who ſhould be placed in the ſupreme regal office, ſhould be deemed and accounted the ſupreme governor; and that many of the *virtues* and *perfections* attributed to the *great Creator*, who governs the heavens, the earth, the ſeas, and all things therein, ought, in a human and ſubordinate ſenſe and ſimilitude, to be attributed to the perſon placed in this *ſupreme regal office*; ſuch as fortitude, goodneſs, juſtice, mercy, wiſdom, and activity."

I muſt here again entreat my readers, to keep in view the different diſtinctions I have before noticed between the *natural* and the *political* capacity of the king, between the *immediate* and *mediate* appointment of God,

and

and alſo between the *legiſlative* and the *executive* power of government. The different prerogatives of the king, which he at this day enjoys, are very compendiouſly and accurately ſet forth by Mr. De Lolme.

The king bound equally by the laws as his ſubjects.

* " It is however to be obſerved, that though in his political capacity of one of the conſtituent parts of the parliament, that is, with regard to the ſhare allotted to him in the legiſlative authority, the king is undoubtedly ſovereign, and only needs alledge his will, when he gives or refuſes his aſſent to the bills preſented to him; yet, in the exerciſe of his powers of government he is no more than a magiſtrate, and the laws, whether thoſe, that exiſted before him, or thoſe, to which by his aſſent he has given being, muſt direct his conduct, and bind him equally with his ſubjects.

" The firſt prerogative of the king, in his capacity of ſupreme magiſtrate, has for its object the adminiſtration of juſtice.

He is the ſource and adminiſtrator of all juſtice.

" 1°. He is the ſource of all judicial power in the ſtate; he is the chief of all the courts of law, and the judges are only his ſubſtitutes; every thing is tranſacted in his name; the

* De Lolme's Conſtit. of England, c. vi. p. 71, & ſeq.

judgments muſt be with his ſeal, and are executed by his officers.

All proſecutions in his name.

" 2°. By a fiction of the law, he is looked upon as the univerſal proprietor of the kingdom; he is in conſequence deemed directly concerned in all offences; and for that reaſon proſecutions are to be carried on in his name in the courts of law.

He is the ſource of mercy, and can pardon offences.

" 3°. He can pardon offences, that is, remit the puniſhment that has been awarded in conſequence of his proſecution.

He is the ſource of honor.

" The ſecond prerogative of the king is, to be the fountain of honour; that is, the diſtributor of titles and dignities; he creates the peers of the realm, as well as beſtows the different degrees of inferior nobility: he moreover diſpoſes of the different offices, either in the courts of law, or elſewhere.

Superintendant of commerce.

" The king is the ſuperintendant of commerce; he has the prerogative of regulating weights and meaſures; he alone can coin money, and can give a currency to foreign coin.

Head of the church of England.

" He is the ſupreme head of the church *. In this capacity he appoints the biſhops and the two archbiſhops; and he alone can convene the aſſembly of the clergy. This aſ-

* i. e. Of the civil eſtabliſhment of the church of England, as before more fully explained.

ſembly

ſembly is formed in England on the model of the parliament; the biſhops form the upper houſe; deputies from the dioceſes, and from the ſeveral chapters, form the lower houſe: the aſſent of the king is likewiſe neceſſary to the validity of their acts or canons; and the king can prorogue or diſſolve the convocation. Convocation what.

" He is in right of his crown the generaliſſimo of all ſea or land forces whatever; he alone can levy troops, equip fleets, build fortreſſes, and fill all the poſts in them. Generaliſſimo of all ſea and land forces.

" He is, with regard to foreign nations, the repreſentative and the depoſitory of all the power and collective majeſty of the nation; he ſends and receives ambaſſadors; he contracts alliances; and has the prerogative of declaring war, and of making peace on whatever conditions he thinks proper. He is the ſole repreſentative of the nation in foreign concerns.

" In fine, what ſeems to carry ſo many powers to the height is, its being a fundamental maxim, that *the king can do no wrong*; which does not ſignify, however, that the king has not the power of doing ill, or, as it was pretended by certain perſons in former times, that every thing he did was lawful; but only that he is above the reach of all courts of law whatever, and that his perſon is ſacred and inviolable." His inability to do wrong. His perſon ſacred and inviolable.

Amongſt thoſe, who may honour theſe ſheets with a peruſal, ſome may be unwilling to ſubmit to a bare expoſition of theſe conſtitutional prerogatives or rights of the crown; for their ſatisfaction I ſhall reſort to the moſt ancient and reſpectable authors of antiquity, who will be allowed at leaſt to have known, what was looked upon and holden to be the law of their days; though the reaſon, ground, and propriety of the law have only been revealed to the illuminating theoriſts of the preſent generation. Between five and ſix hundred years ago, at the very time when our anceſtors, in their love and zeal for the liberties of the conſtitution, bequeathed to us their rights in their famous charter under Henry III. Bracton, as he tells us of himſelf*, for the information at leaſt of poſterity, applied his mind with much attention and labour to ſcrutinize, diſcloſe, and arrange in order the actions, opinions, and judgments of his worthy anceſtors. At no period can I trace any veſtiges of that extreme darkneſs and ignorance, which Drs.

False pretenſions of modern illuminators to the knowledge of our conſtitution and laws.

Our anceſtors anxious to tranſmit the reaſons and principles of our conſtitution.

* Ad inſtructionem ſaltem minorum, ego Henricus de Bracton, animum erexi, ad vetera judicia juſtorum perſcrutanda diligenter, non ſine vigiliis & labore, facta ipſorum conſilia & reſponſa, & quidquid inde notatu dignum inveni, in unam ſummam redigendo, &c. page 1.

Price

Price and Prieſtley inſinuate our anceſtors have been conſtantly kept in. Bracton, who was a judge under Henry III. proves, that this was not the ſpirit of the government of his days; nor does the great charter of our liberties, which is the firſt written formal act of parliament tranſmitted to us from our anceſtors, beſpeak any ſuch ſpirit, wiſh, or intention, that then actuated the repreſentatives of the nation. A very conſtitutional writer of the preſent century goes further, by denying almoſt the poſſibility of the charge. * " As the worſt evils of ſociety flow from ſhort- ſighted or perverted judgments, the conſtitution (with a policy peculiar to itſelf) encourages every method of popular inſtruction. Freedom of debate in parliament tends to clear and lay open the grounds of public proceedings; and the liberty of the preſs is as naturally fitted to the ſupport of a good government, as to the ruin of a bad one. Meaſures, which carry with them a fallacious appearance of lenity, are expoſed by this mean; and thoſe, which carry with them the form of ſeverity, but have the ſubſtance of ſtrength and ſafety, are ſet in their juſt light, for the approbation of the people."

Our conſtitution formed to inſtruct.

* Yorke's Conſiderations on the Law of Forfeiture, P. 4.

I feel therefore the conſoling force of conſtitutional ſanction, even in my humble efforts to diſcloſe and explain the true ſenſe, ſpirit, and principles of it to my countrymen.

The king's ſuperiority in the ſtate.

Under the evident attention to the difference between the *mediate* and *immediate* appointment of power by God, Bracton ſays of the king in his political capacity; * "Every body is under him, and he is under nobody, unleſs it be under God. He has no equal in the realm, becauſe he would then loſe his command, ſince amongſt equals there can be no one ſuperior. But much more ought he not to have any one ſuperior to, or more powerful than himſelf, for ſo would he become inferior to his own ſubjects, and thoſe who are inferior cannot be equal to ſuch, as are more powerful than themſelves. The king therefore ought not to be ſubject to

* Bract. c. 8. "Omnis quidem ſub eo, et ipſe ſub nullo, niſi tantum ſub Deo. Parem autem non habet in regno ſuo, quia ſic amitteret præceptum, cûm par in parem non habeat imperium. Item nec multò fortius ſuperiorem, nec potentiorem habere debet, quia ſic eſſet inferior ſibi ſubjectis, & inferiores pares eſſe non poſſunt potentioribus. Ipſe autem rex, non debet eſſe ſub homine, ſed ſub Deo et ſub lege, quia lex facit regem; attribuat igitur rex legi, quod lex attribuit ei, videlicet, dominationem & poteſtatem; non eſt enim rex, ubi dominatur voluntas & non lex."

any

any man, but only under God and the law, becauſe the law makes the king. Let the king therefore give to the law, what the law gives to the king, that is, authority and power; for there can be no king, where arbitrary will rules and not the law."

It is not poſſible to lay down and account for the firſt principles of our conſtitution more diſtinctly, than this conſiderate and unbiaſſed author does; he firſt eſtabliſhes the authority of Almighty God, who enjoins *jure divino* ſubordination to magiſtracy; then the actual appointment of the people by his permiſſion; and laſtly the efficient ſovereignty of the king by virtue of the appointment of the people. He uſes the collective word *lex* for the legiſlative body, which evidently is the repreſentative body of the nation; and he gives his reaſon, why the king is *ſub Deo and ſub lege*, becauſe *lex* (that is the legiſlative body, or the people) *facit regem*. It is clear, that he here ſpeaks of the ſecondary cauſe, *lex*, otherwiſe he muſt have ſaid, *ipſe ſub nullo niſi tantùm ſub Deo, quia* DEUS *facit regem*. And although in four different places he calls the king *Dei vicarius*, the vicar, or lieutenant, or vicegerent of Almighty God; yet he ſo fully explains the meaning of this term or expreſſion, that the moſt wilful obſtinacy

How the king is God's vicar upon earth.

alone can miſconceive or miſrepreſent it. "Therefore the king muſt exerciſe his legal power, like the vicegerent or miniſter of God upon earth, for ſuch power only is of God; the power of committing injury is the power of the devil, and not of God; and the king will become the miniſter either of God or of the devil, according to whoſeſoever works he ſhall have done. Therefore whilſt he acts juſtly and by law, he is the vicegerent of the eternal king, but he is the miniſter of Satan, whilſt he declines to injury. For he is called a king (or ruler) from ruling according to law, and not from actually reigning; for *he* is really a king, whilſt he acts according to law, but he becomes a *tyrant* from the moment he oppreſſes the people committed to him by violent arbitrary power *." He continues to urge the neceſſity of the king's governing by law upon the ſtrength of the old reaſon of his owing his crown to the law,

* Bract. cap. 9. f. 107. "Exercere igitur debet rex poteſtatem juris, ſicut Dei vicarius & miniſter in terrâ, quia illa poteſtas ſolius Dei eſt; poteſtas autem injuriæ, diaboli eſt non Dei; & cujus horum operum fecerit rex, ejus miniſter erit, cujus opera fecerit. Igitur dum facit juſtitiam, vicarius eſt *regis* æterni; miniſter autem diaboli, dum declinet ad injuriam. Dicitur enim rex a benè regendo, & non a regnando; quia rex eſt, dum benè regit, tyrannus dum populum ſibi creditum violentâ opprimit dominatione."

or

or rather to the legiſlative act of the community, *facit enim lex quod ipſe ſit rex.*

Near two centuries after this, the learned Chancellor Forteſcue, adopting the old adage, *Ars non habet inimicum niſi ignorantem*, "The only enemy to an art, is he who knows it not," endeavoured to enlighten his royal pupil by the inſtructions, which he gave him, and the world in general by the publication of them; amongſt them we read the very ſame conſtitutional doctrine of the limited prerogative or power, and the legal duties of the king of England. * "A king of England cannot at his pleaſure make any alterations in the laws of the land; for the nature of his government is not only *regal*, but *political*. Had it been merely *regal*, he would have a power to make what innovations and alterations he pleaſed in the laws of the kingdom, impoſe *tallages* and other hardſhips upon the people, whether they would or no without their conſent, which ſort of government the *civil laws* point out, when they declare, *quod principi placuit, legis habet vigorem*; but it is much otherwiſe with a king, whoſe government is *political*, becauſe he can neither make any alteration or

The true limitations of our king's power.

* Fort. de Laud. Leg. Ang. c. ix.

change

change in the laws of the realm without the conſent of the ſubject, nor burthen them againſt their wills with ſtrange *impoſitions*; ſo that a people governed by ſuch laws, as are made by their own conſent and approbation, enjoy their properties ſecurely, and without the hazard of being deprived of them, either by the king or any other."

The duties of the crown may be altered by the legiſlature.

The duties of the king, which in fact make a great part of the rights and liberties of the ſubject, although at all times limited and aſcertained by the conſtitution, have certainly at different times been altered, as by the whole legiſlative body they may at any time be, for this plain obvious reaſon; to every ſuch alteration, the king is a free aſſenting party, and therefore he cannot be injured by the impoſition of any new duty; *volenti non fit injuria.* The houſe of peers and the commons enjoying full freedom of debate and deliberation, it becomes fully competent for them, as the delegates or truſtees of the public, to alter or exchange their rights and liberties. I know not how theſe duties can be more clearly diſtinguiſhed and aſcertained, than by the different coronation oaths, which were at different periods preſented to our kings upon their acceſſion to the throne; for it cannot be denied, that the

obſervance of theſe oaths on the behalf of the ſovereign, becomes the primary conſtitutional duty of the king, and involves in it the moſt important conſtitutional rights and liberties of the ſubject. Bracton, ſpeaking generally of them, ſays, * "He muſt at his coronation by the oath, which he takes in the name of Jeſus Chriſt, promiſe theſe three things to his ſubjects: In the firſt place, that he will command, and to the utmoſt of his power procure, that true peace ſhall be poſſeſſed and enjoyed by the church of God, and the whole chriſtian people, during his whole reign. Secondly, that he will forbid and prevent all rapine and other iniquity, in all degrees of men whatever. Thirdly, that in all his judgments he will do juſtice and mercy, in order that a clement and merciful God may vouchſafe to grant him his mercy, and that through his juſtice all mankind may

Coronation oaths ſhew the duties of the king and the rights of the ſubject.

* Lib. iii. c. 9. fol. 107. "Debet enim in coronatione ſua, in nomine Iheſu Chriſti præſtito ſacramento, hæc tria promittere populo ſibi ſubdito: Imprimis, ſe eſſe præcepturum & pro viribus opem impenſurum, ut eccleſiæ Dei & omni populo chriſtiano vera pax, omni ſuo tempore obſervetur. Secundò, ut rapacitates & omnes iniquitates, omnibus gradibus interdicat. Tertiò, ut in omnibus judiciis æquitatem præcipiat & miſericordiam, ut indulgeat ei ſuam miſericordiam clemens & miſericors Deus, & ut per juſtitiam ſuam firmâ gaudeant pace univerſi; ad hoc autem creatus eſt et electus, &c."

enjoy

enjoy laſting peace; for to this end was he created and elected, &c." That is to ſay, to this end was he in his *natural* capacity formed and made by Almighty God, and in his *political* capacity was he conſtituted and appointed by the people. For it appears, that Bracton uſes the word *elected* here, in the ſame ſenſe as Mr. Locke and Dr. Price applied it to King William and his preſent majeſty King George the Third; and not in the leaſt to imply, that any form of popular choice or election by vote was required by the conſtitution to entitle or qualify a perſon to wear the crown of theſe realms. I know of no better nor ſurer ground to form a hiſtory of our conſtitution upon, than the different forms of oaths, which have been tendered to and taken by our ſovereigns at different periods and under different circumſtances; they will of courſe beſpeak the wiſhes and claims of the people at the time, as well as the agnition and compact on behalf of the ſovereign to ſatisfy and admit them.

What conſtitutionally meant by the election of the king to the throne.

To comment upon theſe different forms of oaths, would exceed the intended limits of this publication; I ſhall only therefore conſider with judge Blakiſton the effect of the preſent coronation oath, which is required to be taken by the acts of ſettlement and union.

union. * " However, in what form ſoever it be conceived, this is moſt indiſputably a fundamental and original expreſs contract; though doubtleſs the duty of protection is impliedly as much incumbent on the ſovereign before coronation as after, in the ſame manner as allegiance to the king becomes the duty of the ſubject immediately on the deſcent of the crown, before he has taken the oath of allegiance, or whether he ever takes it at all. This reciprocal duty of the ſubject will be conſidered in its proper place; at preſent we are only to obſerve, that in the king's part of this original contract are expreſſed all the duties, that a monarch can owe to his people, *viz.* to govern according to law; to execute judgment in mercy; and to maintain the eſtabliſhed religion; and, with reſpect to the latter of theſe three branches, we may farther remark, that by the act of union, 5 Ann, c. 8. two preceding ſtatutes are recited and confirmed; the one of the parliament of Scotland, the other of the parliament of *England*; which enact, the former, that every king at his acceſſion ſhall take and ſubſcribe an oath to preſerve the proteſtant religion, and preſbyterian church government in Scotland; the

The effect of the preſent coronation oath.

* Blak. b. i. c. 6. ſub. fin.

latter,

latter, that at his coronation he ſhall take and ſubſcribe a ſimilar oath to preſerve the ſettlement of the church of England, within England, Ireland, Wales, and Berwick, and the territories thereunto belonging."

The king's obligation to preſerve the civil eſtabliſhment of religion.

From the nature and purport of our preſent coronation oath, it muſt naturally occur to every one, that reflects upon what I have before ſaid of the king's headſhip or ſupremacy over the civil eſtabliſhment of the church of England, that he is equally bound to preſerve the civil eſtabliſhment of the preſbyterian church in Scotland, as of the proteſtant church in England; though in principle and doctrine the two religions are widely different from each other. It was not only competent for, but incumbent upon King James the Second, as a Roman catholic, King William the Third, as a preſbyterian, King George the Firſt, as a Lutheran, and his preſent majeſty, as a real church of England man, to comply with this coronation oath, by preſerving the rights and privileges of theſe reſpective churches; for the civil eſtabliſhments of them were ſettled by poſitive laws, which the king is bound to obey and execute by virtue of his office and truſt.

Before I quit this ſubject, it may not be improper to quote the anſwer of Sir John Forteſcue

Forteſcue to his royal pupil's queſtion; "Why ſome kings of England were not pleaſed with the laws of England, but were induſtrious to introduce the civil laws as a part of the conſtitution, to the prejudice of the common law?"

* "You would ceaſe to wonder, my *prince*, if you would pleaſe ſeriouſly to conſider the nature and occaſion of the attempt. I have already given you to underſtand, that there is a very noted ſentence, a favourite maxim or rule in the *civil law*, *that which pleaſes the prince has the effect of a law.* The laws of *England* admit of no ſuch maxim, or any thing like it. A king of *England* does not bear ſuch a ſway over his ſubjects, as a king *merely*, but in a *mixt political capacity*; he is obliged by his coronation oath to the obſervance of the laws, which ſome of our kings have not been able to digeſt, becauſe thereby they are deprived of that free exerciſe of dominion over their ſubjects in that full extenſive manner, as *thoſe kings* have, *who* preſide and govern by an *abſolute regal power*; who in purſuance of the laws of their reſpective kingdoms, in particular, *the civil law*, and of the aforeſaid *maxim*, govern their ſub-

Why ſome of our former kings wiſhed to be abſolute.

* Fort. de Laud. Leg. Ang. c. xxxiv.

jects,

jects, change laws, enact new ones, inflict puniſhments, and impoſe taxes, at their mere will and pleaſure, and determine ſuits at law in ſuch manner, when, and as they think fit; for which reaſon *your anceſtors* endeavoured to ſhake off this *political* frame of government, in order to exerciſe the ſame *abſolute regal dominion* too over their ſubjects, or rather to be at their full ſwing to act as they liſt."

It was well obſerved by the late judge Blakiſton, who was neither a violent whig nor a republican writer, * " that one of the principal bulwarks of civil liberty, or in other words of the Britiſh conſtitution, was the limitation of the king's prerogative by bounds ſo certain and notorious, that it is impoſſible he ſhould ever exceed them without the conſent of the people on the one hand, or on the other, without a violation of that original contract, which in all ſtates impliedly, and in ours expreſsly, ſubſiſts between the prince and the ſubject." He further aſſerts in a very manly manner the right, which in my circumſtances I call a *duty*, to inveſtigate and diſcuſs the prerogatives of the crown.

Right and duty to diſcuſs the prerogative royal.

" *There* cannot be a ſtronger proof of that genuine freedom, which is the boaſt of this

* Blak. Com. b. i. c. 7.

age

age and country, than the power of diſcuſſing and examining with decency and reſpect the limits of the king's prerogative, a topic, that in ſome former ages was thought too delicate and ſacred to be profaned by the pen of a ſubject; it was ranked among the *arcana imperii*, and like the myſteries of the *bona dea*, was not ſuffered to be pried into by any, but ſuch as were initiated in its ſervice; becauſe perhaps the exertion of the one, like the ſolemnities of the other, would not bear the inſpection of a rational and ſober enquiry. The glorious Queen Elizabeth herſelf made no ſcruple to direct her parliaments to abſtain from diſcourſing on matters of ſtate; and it was the conſtant language of this favourite princeſs and her miniſters, that even that auguſt aſſembly ought not to deal, to judge, or to meddle with her majeſty's prerogative royal; and her ſucceſſor King James the Firſt, who had imbibed high notions of the divinity of regal ſway, more than once laid it down in his ſpeeches, that as it is atheiſm and blaſphemy in a creature to diſpute what the Deity may do, ſo it is preſumption and ſedition in a ſubject to diſpute what a king may do in the height of his power: good chriſtians, he adds, will be content with God's will revealed in his word; and good

The free diſcuſſion of the prerogative diſcouraged by ſeveral of our monarchs.

ſubjects will reſt in the king's will revealed in his law."

Prerogatives effectually veſted in the crown.

The conſtitution has annexed theſe powers and prerogatives to the king, as to the executive power or firſt branch of the legiſlature, for the eſtabliſhment, maintenance, and preſervation of its own dignity, energy, and vigor; and when it intruſted the king with them, it veſted them in him ſo effectually, that it became almoſt impoſſible for any power upon earth to diveſt them out of him. Therefore do we ſee no change nor alteration made in the royal prerogative, in which the king was not freely conſenting, or where he had not voluntarily given up or abandoned his right of conſent. Yet great and apparently unlimited, or uncontroulable, as theſe prerogatives may appear at firſt ſight, the wiſdom of our admirable conſtitution has fully ſecured the ſubjects of England againſt any poſſible invaſion of their rights by the crown, either by private injury or public oppreſſion.

Subjects redreſs againſt the crown in private injuries.

* "And firſt, as to private injuries; if any perſon has, in point of property, a juſt demand upon the king, he muſt petition him in his court of chancery, where his chan-

* Blak. Com. b. 1. c. 7.

cellor

cellor will adminiſter him right, as a matter of grace, though not upon compulſion." In ſuch caſes, the ſubject obtains his remedy by the proceſs of *monſtrans de droit*, or by *petition of right*; * "in either of which the ſame juſtice is done to him, as in any other legal or equitable proceſs whatſoever."

† "*Next*, as to caſes of ordinary public oppreſſion, where the vitals of the conſtitution are not attacked, the law hath alſo aſſigned a remedy. For, as a king cannot miſuſe his power, without the advice of evil counſellors, and the aſſiſtance of wicked miniſters, theſe men may be examined and puniſhed. The conſtitution has therefore provided, by means of indictments and parliamentary impeachments, that no man ſhall dare to aſſiſt the crown in contradiction to the laws of the land. But it is at the ſame time a maxim in thoſe laws, that the king himſelf can do no wrong, ſince it would be a great weakneſs and abſurdity in any ſyſtem of poſitive law, to define any poſſible wrong, without any poſſible redreſs."

Security of the nation againſt public wrongs.

‡ "For as to ſuch public oppreſſions, as tend to diſſolve the conſtitution, and ſubvert

* 4. Co. Rep. 54.
† Blak. ubi. ſupra.
‡ Blak. Com. b. i. c. 7.

the fundamentals of government, they are caſes, which the law will not out of decency ſuppoſe; being incapable of diſtruſting thoſe, whom it has inveſted with any part of the ſupreme power; ſince ſuch diſtruſt would render the exerciſe of that power precarious and impracticable. For, wherever the law expreſſes its diſtruſt of abuſe of power, it always veſts a ſuperior coercive authority in ſome other hand to correct it; the very notion of which deſtroys the idea of ſovereignty. If therefore for example, the two houſes of parliament, or either of them, had avowedly a right to animadvert on the king, or each other, or if the king had a right to animadvert on either of the houſes, that branch of the legiſlature ſo ſubject to animadverſion would inſtantly ceaſe to be part of the ſupreme power; the balance of the conſtitution would be overturned, and that branch or branches, in which this juriſdiction reſided, would be completely ſovereign. The ſuppoſition of *law* therefore is, that neither the king nor either houſe of parliament (collectively taken) is capable of doing any wrong; ſince in ſuch caſes the law feels itſelf incapable of furniſhing any adequate remedy; for which reaſon all oppreſſion, which may happen to ſpring from any branch of the ſovereign

There can be no controul over ſovereign power.

reign power, muſt neceſſarily be out of the reach of any *ſtated rule* or *expreſs legal* proviſion; but if ever they unfortunately happen, the prudence of the times muſt provide new remedies upon new emergencies."

Prerogatives of the king in his political capacity.

Mr. Yorke, in his treatiſe upon the law of forfeiture, has in a very compendious and clear method enumerated moſt of the *attributes*, which the conſtitution annexes to the political capacity of the king. * "The king is conſidered in law in two different capacities, the *political* and the *natural*. In his *politic* capacity he never dies, nor is ſubject to infancy; is under the happy *inability* of doing wrong, becauſe acting by his officers, and limited by law; combines characters and powers of ſuch a kind, as to make him one of the three eſtates in the conſtitution; and forms that eſtate, which gives life and motion to the reſt. He repreſents the kingdom in tranſacting with foreign countries for the purpoſes of peace or war. He has a controul in the making of laws, and when made, without his adminiſtration of them, they are a dead letter. *He is the fountain of honour, juſtice, and mercy.* The executive

* Conſiderations on the Law of Forfeiture, p. 113, 114.

power of the government is lodged intirely in his hands; and for this reaſon offences are referred to him, as being in contempt of that power, and to be puniſhed by it. Treaſons, which concern the repreſentation of his authority, or the inſtruments, that convey it to the people, as his *ſeals*, his *coin*, and certain great magiſtrates in the execution of their office, relate to the allegiance, which the ſubject owes him in this view. In like manner treaſons, which concern the ſafety of the kingdom, in reſpect of foreign *invaſion*, or open *rebellion*, or ſecret *conſpiracy*; in a word, all crimes of a public nature, and even injuries to private perſons, are ſuppoſed to be againſt his peace, dignity, and crown; ſo that, what in other free countries are called laws relative to public crimes, or crimes againſt the ſtate, paſs in England under the general denomination of *placita coronæ*, or crown law." And he further very emphatically puts theſe queſtions: * "Has the law provided no remedy in reſpect of the king? And is the *political* capacity thus to furniſh an exemption to him in his *natural*, from being called to account? *The law will make no anſwer, but hiſtory will give one.*"

* Conſiderations on the Law of Forfeiture, p. 121.

He

He then enters into a detail of the revolution of 1688, which, as I have already ſaid ſo much upon that ſubject, I ſhall not repeat.

Conſtitutional checks upon the prerogative.

We never can ſufficiently admire the delicate though powerful checks, with which the conſtitution has enabled the other branches of the legiſlature to moderate and curb the powers of the crown, which to a partial obſerver appear little ſhort of the prerogatives claimed by the moſt abſolute monarchs. * "The king of England therefore has the prerogative of commanding armies, and equipping fleets, but without the concurrence of his parliament he cannot maintain them. He can beſtow places and employments, but without his parliament he cannot pay the ſalaries attendant on them. He can declare war, but without his parliament it is impoſſible for him to carry it on. In a word, the royal prerogative, deſtitute as it is of the power of impoſing taxes, is like a vaſt body, which cannot of itſelf accompliſh its motions; or if you pleaſe, it is like a ſhip completely equipped, but from which parliament can at pleaſure draw off

* De Lolme's Conſtitution of England, b. i. c. vi.

the water, and leave it aground, and alſo ſet it afloat again by granting ſubſidies."

The cautious moderation with which the rights of the different conſtituent parts of our legiſlature are exerciſed.

The withholding or refuſal of the neceſſary ſupplies would be a meaſure of ſuch extreme violence, that would in effect produce a diſſolution of the government; but ſuch a natural and powerful bias has each conſtituent part of our conſtitution for preſerving its reſpective equilibrium in the ſtate, that the largeſt and moſt powerful prerogatives are ever exerciſed with the moſt cautious moderation and prudence. Thus has parliament * "in this reſpect impoſed laws upon themſelves, and without touching the prerogative itſelf they have moderated the exerciſe of it. A cuſtom has for a long time prevailed, at the beginning of every reign, and in the kind of overflowing of affection, which takes place between a king and his firſt parliament, to grant the king a revenue for his life; a proviſion, which with reſpect to the great exertions of his power, does not abridge the influence of the commons, but yet puts him in a condition to ſupport the dignity of the crown, and affords him, who is the firſt magiſtrate of the nation, that independence, which the laws enſure alſo to thoſe magi-

Civil liſt granted to the king for life.

* De Lolme's Conſtitution of England, b. i. c. vii.

ſtrates,

ſtrates, who are particularly entruſted with the adminiſtration of juſtice.

"This conduct of the parliament provides an admirable remedy for the accidental diſorders of the ſtate. For though by the wiſe diſtribution of the powers of government great uſurpations are become in a manner impracticable, nevertheleſs it is impoſſible, but that in conſequence of the continual, though ſilent efforts of the executive power to extend itſelf, abuſes will at lengh ſlide in. But here the powers wiſely kept in reſerve by the parliament, afford the means of remedying them. At the end of each reign the civil liſt, and conſequently that kind of independence, which it procured, are at an end. The ſucceſſor finds a throne, a ſceptre, and a crown; but he finds neither power, nor even dignity; and before a real poſſeſſion of all theſe things is given him, the parliament have it in their power to take a thorough review of the ſtate, as well as correct the ſeveral abuſes, that may have crept in during the preceding reign; and thus the conſtitution may be brought back to its firſt principles."

An opportunity at the beginning of each reign to review the ſtate &c.

Some of the rights, liberties, and privileges of the lords and commons, which in fact greatly moderate and controul the prerogative,

tive, power, and influence of the crown, will be more properly noticed, when I come to treat of thoſe two branches of the legiſlature ſeparately.

Remedies againſt the crimes of miniſters.

Although the conſtitution has placed the ſacred perſon of the ſovereign in ſo ſecure and exalted a ſtation, as not to be in any manner liable to any vindictive, penal, or even mortifying and humiliating proceſs, upon the political principle of his *inability* to do wrong; yet it has not left the community without its remedy in every caſe, in which it might be injured. Such crimes or offences, either of miniſters or others, as amount to high treaſon, I ſhall conſider hereafter. * "But as to offences of a lower kind, ſuch as the evil advice of miniſters influencing the king, not indeed to exceed the limits of his power, but to abuſe the diſcretion, with which his people have intruſted him, the proceeding by impeachment of the commons for high crimes and miſdemeanors is a *complete* remedy, and according to the degree and height of the offences the judgment may be proportioned in parliament." Nay the conſtitution is ſo reſpectfully tender of the perſon, character, and reputation of the ſove-

* Conſiderations on the Law of Forfeiture, p. 117.

reign, that it makes his miniſters reſponſible for every circumſtance, that can operate to the prejudice or injury of any of them. * "Meaſures of the greater ſeverity may indeed in ſome circumſtances be neceſſary; but the miniſter, who adviſes ſhould take the execution and odium of them entirely upon himſelf. He not only betrays his maſter, but violates the ſpirit of the Engliſh conſtitution, when he expoſes the chief magiſtrate to the perſonal hatred or contempt of his ſubjects. And the reputation of public meaſures depends upon the miniſter, who is reſponſible, not upon the king, whoſe private opinions are not ſuppoſed to have any weight againſt the advice of his council, whoſe perſonal authority ſhould therefore never be interpoſed in public affairs. This, I believe, is true conſtitutional doctrine."

The king's perſonal authority not to be interpoſed in public affairs.

It ever is a point of peculiar delicacy and tenderneſs, to ſpeak of extreme caſes, which, though without all human probability, are ſtill within the actual poſſibility of human occurrences. "It is," ſays Mr. Yorke, † "ſcarce conſiſtent with that modeſty, which the profeſſors of the law obſerve in putting

Indelicacy in putting extreme caſes.

* Junius, Letter xxxv. 3d April, 1770.

† Conſiderations on the Law of Forfeiture, p. 115.

caſes

caſes relative to ſtatutes of this kind, to propoſe any other than thoſe, which have *exiſted* in fact, or fall *clearly* within the letter of them." In order to give my readers the more complete ſatisfaction upon this ſubject, I ſhall again recur to the reſpectable authority of this learned and conſtitutional author.

Caſes tending to a diſſolution of government.

* "Now if any one think, in caſe the king ſhould unhappily and obſtinately intereſt his perſon, in ſupporting the actions of his miniſters againſt the clear and eſtabliſhed laws of the land, that the principles of a conſtitution ſo limited and controuled in all the parts of it ſeem to warrant the providing of a judicial remedy againſt him, as againſt another magiſtrate or miniſter of ſtate, the anſwer to this chimæra is plain; that every conſtitution of government has its peculiar caſes tending to diſſolution, beyond the power of any *ſtated* remedy, even though it be the mixt form of government, which both avoids thoſe, to which other forms are ſubject, and is leſs frequently in danger from ſuch convulſions, as are proper to itſelf. The Engliſh government therefore notwithſtanding its du-

* Conſiderations on the Law of Forfeiture, p. 118, & ſeq.

rable

rable nature, and *ſingular advantages*, partaking in ſo large a degree of monarchy, the caſe here propoſed would be a caſe tending to diſſolution, not to be ſubjected to the ordinary proviſions of law. The reigns of Charles I. and James II. are evidence of this; and it ariſes from the nature of the thing; becauſe the king of England (unlike the kings of Sparta or Arragon, with their Ephori and El Giuſticia, officers appointed to inſpect and judge their actions) is not only a magiſtrate or general, but compoſes an *eſſential* part of the ſupreme power; ſo that, on the one hand, ſhould a future king attempt to ſubject the crown and people to a foreign yoke, or to ſet up a general diſpenſing power by proclamation, to controul the operation of all the laws, theſe would be caſes manifeſtly tending to diſſolution. Or ſhould he ſummon the lords to aſſiſt him in making laws, without the repreſentative body of the commons, and the lords inſtead of mediating, ſhould ſupport him in the arbitrary deſign of excluding the commons from a ſhare in the legiſlature, it would be a caſe tending to diſſolution; and though the law will *not* ſuppoſe the poſſibility of the wrong, ſince it cannot mark out or aſſiſt the remedy, yet every member of that repreſentative body might exclaim in the

the words of Craſſus the Roman orator, when he oppoſed the encroachments of a tyrannical conſul on the authority of the ſenate, '*Ille non conſul eſt, cui ipſe ſenator non ſum*;' He is no king, to whom we are not an houſe of parliament. On the other hand, ſhould the repreſentative of the commons, like that of Denmark, ſurrender the rights and liberties of the people into the hands of the king, and the king, inſtead of diſſolving the parliament, ſhould accept the ſurrender, and attempt to maintain it, contrary to the laws, and to the oath of the crown; or ſhould the two houſes take the power of the militia, the nomination of privy counſellors, and the negative in paſſing laws out of the crown, theſe would be caſes tending to diſſolution; that is, they are caſes which the law will not put, being incapable of diſtruſting thoſe, whom it has inveſted with the ſupreme power, or its own perpetual duration, and *they are out of the reach of laws*, and ſtated remedies, becauſe they render the exerciſe of them precarious and impracticable. This obſervation may be applied to every ſimilar caſe, which can be found in imagination, relative to the ſeveral eſtates, with this difference, that it holds ſtrongeſt *as to the* king, in whom both the common and ſtatute law have repoſed the whole

whole executive power; nor could the leaſt branch of it be lodged in the two houſes, for the purpoſe of providing a judicial remedy againſt him, unleſs the conſtitution had erected *imperium in imperio*, and were inconſiſtent and deſtructive of itſelf."

The original conſtitutional right in the king to convene parliaments at his diſcretion

As circumſtances have from time to time ariſen in the ſtate, ſo have different modifications been made in the royal prerogative, to meet the difficulty, or prevent the miſchief in future, which the legiſlative preſcience had not expreſsly guarded againſt before. Thus, as the king was by the conſtitution indiſputably intitled to the excluſive and diſcretionary right of convening and aſſembling the parliament, we find at laſt in the 16th year of King Charles II. A. D. 1664, the legiſlative body fixing the time of their being convened or ſummoned. I ſhall not undertake to inveſtigate or ſet forth the reaſons, why this frequency was at this time fixed upon or determined; but I ſhall merely obſerve, that the act *, after reciting that, "whereas the act made in the parliament begun at *Weſtminſter* the third day of *November*, in the ſixteenth year of the reign of our late ſovereign lord King *Charles* of bleſſed memory, intituled,

altered into an obligation of convening them once in three years.

* 16 Car. II. c. 1. An Act for the aſſembling and holding of parliament once in three years at leaſt.

An

An Act for the preventing of Inconveniences happening by the long Intermiſſion of Parliaments, is in derogation of his majeſty's juſt rights and prerogative inherent to the imperial crown of this realm, for the calling and aſſembling of parliaments, and may be an occaſion of manifold miſchiefs and inconveniencies, and much endanger the peace and ſafety of his majeſty, and all his liege people of this realm, repeals ſuch act, and enacts as follows:

"And becauſe by the ancient laws and ſtatutes of this realm, made in the reign of King *Edward* the Third, parliaments are to be held very often, your majeſty's humble and loyal ſubjects the lords ſpiritual and temporal, and the commons, in this preſent parliament aſſembled, moſt humbly do beſeech your moſt excellent majeſty, that it may be declared and enacted, and be it declared and enacted by the authority aforeſaid, that hereafter the ſitting and holding of parliaments ſhall not be intermitted or diſcontinued above three years at the moſt; but that within three years from and after the determination of this preſent parliament, and ſo from time to time within three years after the determination of any other parliament or parliaments, or if there be occaſion more often, your majeſty, your heirs and ſucceſſors, do iſſue out your writs for calling, aſſembling, and

and holding of another parliament, to the end there may be a frequent calling, aſſembling, and holding of parliaments once in three years at the leaſt."

Writs to be iſſued forty days before the meeting of parliament.

* "Moreover, as the moſt fatal conſequences might enſue, if laws, which might moſt materially affect public liberty, could be enacted in parliaments abruptly and imperfectly ſummoned, it has been eſtabliſhed, that the writs for aſſembling a parliament muſt be iſſued forty days at leaſt before the meeting. Upon the ſame principle it has alſo been enacted, that the king cannot abridge the term he has once fixed for a prorogation, except in the two following caſes; viz. of a rebellion, or of imminent danger of a foreign invaſion; in both which caſes a fourteen days notice muſt be given †."

Alterations in the conſtitution.

Although the king by his royal prerogative be the ſupreme head of the civil eſtabliſhment of the church, he cannot alter the eſtabliſhed religion, nor is he now permitted to hold the crown, if he profeſs the Roman catholic religion, as I have before obſerved. I mention this again, to inforce the more ſenſibly the right of the legiſlature to alter the conſtitution; and that this altera-

* De Lolme, c. viii.

† 30 Geo. II. c. 25.

tion has been made ſince the revolution, is proved by the actual poſſeſſion of the throne by king James II. before that event; the reaſons of it were fully canvaſſed and ſubmitted to even in thoſe times of animoſity and heat. * "But when theſe prerogatives are aſſerted to a prince, who is of a contrary religion to that eſtabliſhed by law, there would be always danger of their being abuſed to the prejudice or deſtruction of the eſtabliſhed religion; to which it cannot be forgotten, that the promoters of the bill of excluſion uſed the ſame argument; if you leave him king, ſay they, he will have all the prerogatives of a king, and thoſe prerogatives may be made inſtrumental to the ruin of your religion; which could not be denied by the gentlemen on the other ſide, who oppoſed that bill. Their only reply was, *fiat juſtitia, ruat cælum*; it is his right, and we muſt not do evil, that good may come; we muſt not do wrong, no, not to promote the intereſt of religion itſelf." Nothing but an alteration in the conſtitution could prevent the poſſibility of the like event happening again.

* Lord Chief Juſtice Herbert's Reaſons for the Judgment in the Caſe of Sir Edward Hales, p. 32.

"With

King complete repreſentative of the nation in foreign treaties.

* "With regard to foreign concerns, the king is the delegate or repreſentative of his people. It is impoſſible, that the individuals of a ſtate in their collective capacity can tranſact the affairs of that ſtate with another community equally numerous as themſelves. Unanimity muſt be wanting to their meaſures, and ſtrength to the execution of their counſels. In the king therefore, as in a center, all the rays of his people are united, and form by that union a conſiſtency, ſplendor, and power, that make him feared and reſpected by foreign potentates, who would ſcruple to enter into any engagement, that muſt afterwards be reviſed and ratified by a popular aſſembly. What is done by the royal authority with regard to foreign powers, is the act of the whole nation; what is done without the king's concurrence, is the act only of private men."

King can keep up what ſea forces he pleaſes.

† "The king has the military power; but ſtill with reſpect to this, he is not abſolute. It is true, in regard to the ſea-forces, as there is in them this very great advantage, that they cannot be turned againſt the liberty of the nation, at the ſame time that they are the ſureſt bulwark of the iſland, the

* Black. Com. b. i. c. vii.

† De Lolm. c. viii.

king may keep them as he thinks proper; and in this reſpect he lies only under the general reſtraint of applying to parliament for obtaining the means of doing it. But in regard to land forces, as they may become an immediate weapon in the hands of power, for throwing down all the barriers of public liberty, the king cannot raiſe them without the conſent of parliament. The guards of Charles II. were declared anti-conſtitutional; and James's army was one of the cauſes of his being at length dethroned.

But cannot raiſe land forces without the conſent of parliament.

The nature of our preſent ſtanding army.

" In theſe times, however, when it is become a cuſtom with princes to keep thoſe numerous armies, which ſerve as a pretext and means of oppreſſing the people, a ſtate, that would maintain its independence is obliged in great meaſure to do the ſame. The parliament has therefore thought proper to eſtabliſh a ſtanding body of troops, which amounts to about thirty thouſand men, of which the king has the command.

" But this army is only eſtabliſhed for one year; at the end of that term it is (unleſs re-eſtabliſhed) to be *ipſo facto* diſbanded; and as the queſtion, which then lies before parliament is not whether the army *ſhall be diſſolved*, but whether it ſhall be *eſtabliſhed anew*, as if it had never exiſted, any one of the

the three branches of the legiſlature may, by its diſſent, hinder its continuance.

"Beſides, the funds for the payment of this body of troops are to be raiſed by taxes, that never are eſtabliſhed for more than one year; and it becomes likewiſe neceſſary, at the end of this term again to eſtabliſh them."

The pay of the army is always raiſed by annual taxes.

Againſt any abuſes of the king's prerogative in commencing, carrying on, or concluding wars, or in making treaties, leagues, or alliances with foreign ſtates, is the conſtitutional ſecurity of parliamentary impeachments of the miniſters, who ſhall have adviſed or induced the crown to an imprudent, detrimental, or injurious exertion of the prerogative.

Impeachment of miniſters the remedy againſt the declaration of imprudent wars.

* "*Another* capacity, in which the king is conſidered in domeſtic affairs, is as the fountain of juſtice, and general conſervator of the peace of the kingdom. By the fountain of juſtice the law does not mean the *author* or *original*, but only the *diſtributor*. Juſtice is not derived from the king, as from his *free gift*; but he is the ſteward of the public, to diſpenſe it to whom it is *due*. He is not the ſpring, but the reſervoir, from whence

King is the diſtributor or diſpenſer of juſtice.

* Blak. Com. b. i. c. 7.

right and equity are conducted, by a thouſand channels, to every individual. And hence it is, that all juriſdictions of courts are either mediately or immediately derived from the crown, their proceedings run generally in the king's name, they paſs under his ſeal, and are executed by his officers.

" It is probable, and almoſt certain, that in very early times, before our conſtitution arrived at its full perfection, our kings in perſon often heard and determined cauſes between party and party; but at preſent, by the long and uniform uſage of many ages, our kings have delegated their whole judicial power to the judges of their ſeveral courts, which are the grand depoſitory of the fundamental laws of the kingdom, and have gained a known and ſtated juriſdiction, regulated by certain and eſtabliſhed rules, which the crown itſelf cannot now alter but by act of parliament. And, in order to maintain both the dignity and independence of the judges in the ſuperior courts, it is enacted by the ſtatute 13 W. III. c. 2. that their commiſſions ſhall be made (not as formerly, *durante bene placito*, but) *quamdiu bene ſe geſſerint*, and their ſalaries aſcertained and eſtabliſhed; but that it may be lawful to remove them on the addreſs of both houſes of

Independence of the judges.

of parliament. And now, by the noble improvements of that law, in the ſtatute of 1 Geo. III. c. 23. enacted at the earneſt recommendation of the king himſelf from the throne, the judges are continued in their offices during their good behaviour, notwithſtanding any demiſe of the crown (which was formerly held immediately to vacate their ſeats) and their full ſalaries are abſolutely ſecured to them during the continuance of their commiſſion; his majeſty having been pleaſed to declare, that he looked upon the independence and uprightneſs of the judges, as eſſential to the impartial adminiſtration of juſtice, as one of the beſt ſecurities of the rights and liberties of his ſubjects, and as moſt conducive to the honour of the crown."

CHAP. XII.

OF THE DISPENSING POWER IN THE CROWN.

SINCE the paſſing of the firſt of William and Mary I will not ſuppoſe, that any one individual in the nation can look upon the *diſpenſing power* to be a legal or conſtitutional prerogative in the crown, or that it can on any occaſion be exerciſed by the king independently of parliament. But as this was one of the great grievances complained of at the revolution, and was generally looked upon by the nation as an uſurpation of the crown, and a direct incroachment upon the liberties of the people, I ſhall beg leave to make ſome obſervations upon it. It appears to me as clear, that the *diſpenſing power*, as it was exerciſed down to the time of the revolution, was a part of the ancient royal prerogative, as it is unqueſtionable, that it was in its nature a power capable of the groſſeſt abuſe, and conſequently highly improper and even dangerous to be truſted in the hands of the ſovereign. As it is now more than a century, ſince by this explicit and judicious act of parliament

Diſpenſing power dangerous to be truſted in the hands of the crown.

the diſpenſing power has been declared unconſtitutional, an opinion upon the old legal queſtion may be now hazarded without a ſhadow of diſpleaſure or offence. I ſhall do it by way of illuſtration of the principle, *that the ſovereignty of power continues for ever unalienably to reſide with the people*; and to this principle I attribute the glory and preſervation of the Engliſh conſtitution.

Of this queſtion I ſay what lords Elleſmere and Bacon ſaid formerly of another, that it is not a queſtion *de bono*, but *de vero*: I think it as true, that the right did exiſt, as I think it improper that it ſhould have exiſted. The account of the authorities in law, upon which judgment was given in Sir Edward Hale's caſe, written by Sir Edward Herbert, chief juſtice of the common pleas in vindication of himſelf I cannot help commending as one of the moſt upright, ſolid, and convincing arguments I ever remember to have read, as far as it goes to prove the exiſtence of the right from its ancient and continued uſage and practice. But like all other tories, he deduced this prerogative of the crown, like the whole regal dignity and power itſelf, from the wrong ſource. He clearly ſhews the uſage and exertion of this prerogative to have been noticed and acknowledged

knowledged by parliament and the courts of law for ſome centuries. It could only then have exiſted by the ſufferance, acquieſcence, or recognition of the community; and that it did ſo, the very uſage of the term of *non obſtante* is a convincing proof.

It appears from the uſage of the term *non obſtante*, that the diſpenſing power was actually exerciſed.

I do not mean to enter into nor repeat any of Sir Edward Herbert's arguments. The difference, which is admitted by all parties, between the right of diſpenſing from ſtatutes, which enjoin *mala in ſe* and *mala prohibita*, is to my mind ſufficiently convincing, that the people of this nation did heretofore acknowledge or admit of a right in their ſovereign to diſpenſe in certain caſes with the obligations of acts of parliament. For as to *mala in ſe*, it was no more in the power of the parliament, than of the king, to permit or allow of any diſpenſation or ſuſpenſion from them, as is evident; that is, no human power whatever could render *malum in ſe*, licit or lawful, much leſs legal or conſtitutional; and as to the *malum prohibitum*, we are ſpeaking of what is prohibited by the legiſlative authority; now it is evident, that the executive power, as a part of the legiſlature, can of itſelf have no abſolute power, nor controul, nor juriſdiction over the whole legiſlature, for then the part would be greater, than

The difference between diſpenſing with *mala prohibita* and *mala in ſe*, abſurd.

than the whole; but if it could of itſelf ſuſpend or diſpenſe with the obligation or coercive effect of the acts of the whole legiſlature, it would have ſuch power, controul, or juriſdiction over it. The ſubject matter of the legiſlative act is perfectly irrelevant to the power of ſuſpending it; the power, which forbids the killing of a partridge before the firſt day of September, is the ſame, and as binding and as uncontroulable and indiſpenſable, as that, which condemns the traitor to be hanged, drawn, and quartered: nothing but the conſent of the community could veſt a right in the king to diſpenſe with either of them; and from every ſort of authority, that can be produced, it appears evident beyond queſtion, that this right was formerly permitted and acknowledged in the crown.

The ſubject matter of the act irrelevant to the power of diſpenſing from it.

The poſſible abuſe of this prerogative by the ſovereign, is no more an argument againſt the ſubſiſtence of the prerogative itſelf, than againſt other undoubted rights and prerogatives ſtill veſted in the crown. If the king were to pardon every criminal, that is condemned, or create an army of peers, ſuch anarchy and confuſion would follow the imprudent exertion of his prerogative, that the preſervation of the ſtate would require an immediate check, or an alteration in this part

The imprudent exerciſe of a prerogative, no proof againſt the ſubſiſtence of it.

part of the conſtitution; but the poſſibility of abuſing a prerogative does not certainly do away the ſovereign's right to it. In all ſuch kinds of prerogative, the diſcretionary and prudential power of exertion is not the leaſt part of the prerogative itſelf.

Upon the whole, ſince this very great and enormous power or prerogative is now for the benefit and happineſs of the nation rendered illegal and unconſtitutional, I ſhall expect, ſince all party motives and reaſons are now at an end, that ſome few obſervations will be candidly attended to by an unbiaſſed, becauſe now a diſintereſted public; and I frankly profeſs, that I ſhall preſume upon moſt of my readers thinking with me, that their anceſtors, in 1688, were as commendable for inſiſting upon the annihilation of the right, as their progenitors had been blameable for having acquieſced in or ſubmitted unto it ſo long.

Acquieſcence of the community to the prerogative gives a right to the crown.

It appears, that the free acquieſcence of the community in the actual exerciſe of this prerogative in the crown, is a convincing proof of the right of the ſovereign to the prerogative itſelf; (for almoſt the whole prerogative of the crown originated from, and became eſtabliſhed by the tacit conſent of the people).

In

In the days of King Henry VIII. the parliament paſſed an expreſs act, by which they actually veſted in the king a much more dangerous and extenſive prerogative or power, than the diſpenſing power; which, although all writers have unexceptionably condemned and reprobated, yet I never have as yet met with one, who doubted of its legal validity, whilſt the act was in force. This prerogative or right of diſpenſing in certain caſes with the obligations of acts of parliament, having, like moſt other prerogatives, originated from the tacit aſſent of the community, and having been through a long ſeries of years recognized by acts of parliament, diſcuſſed and confirmed by courts of law, frequently exerciſed by the king, and always ſubmitted to by the people, can be leſs effectually argued againſt *a priori*, than the act of 31 Hen. VIII. c. 8. of which Sir Robert Atkins, a very conſtitutional writer, and an old whig, ſpeaks in this manner: * "Now from this ſuppoſed and imaginary defect of law, or ſome particular miſchief or hardſhip ſometimes (though very rarely) happening to ſome men, which hardſhip was not foreſeen by the makers of the law (although this is

The diſpenſing power recognized by parliament.

* Atkins's Enquiry into the Power of diſpenſing with Penal Statutes, p. 199. & ſeq.

oftener

oftener pretended and feigned than happening in truth) occaſion has been taken to aſſert a power in the prince or chief ruler to diſpenſe with the law in extraordinary caſes, and to give eaſe or relaxation to the perſon, that was too hard bound or tied to a law; for, as I obſerved before, the law is of a binding and reſtraining nature and quality; it hath the ſame ſpecious pretence as a law made 31 H. VIII. c. 8. had, which was of moſt deſperate and dangerous conſequence, had it not ſpeedily been repealed by the ſtatute of 1 E. VI. c. 12.

Act that proclamations by the king ſhould have the force of acts of parliament.

"The title of that miſchievous act of 31 H. VIII. is this; *An Act that Proclamations made by the King's Highneſs, with the Advice of the Honourable Council* (meant of the privy council) *ſhall be obeyed and kept as though they were made by Act of Parliament.*

"The preamble recites, the king, by advice of his council, had thentofore ſet forth ſundry proclamations concerning articles of religion, and for an unity and concord to be had among his ſubjects, which nevertheleſs many froward, wilful, and obſtinate perſons have wilfully contemned and broken, not conſidering what a king by his royal power may do; and for lack of a direct ſtatute and law to coherce offenders to obey theſe proclamations,

clamations, which being ſtill ſuffered, ſhould encourage offenders to the diſobedience of the laws of God, and ſound too much to the great diſhonour of the king's moſt royal majeſty (who may full ill bear it).

"Conſidering alſo, that ſudden occaſions fortune many times, which do require ſpeedy remedies, and by abiding for a parliament, in the mean time might happen great prejudice to enſue to the realm; and weighing that his majeſty (which by the regal power given by God, may do many things in ſuch caſes) ſhould not be driven to extend the ſupremacy of his regal power, by wilfulneſs or froward ſubjects; it is therefore thought neceſſary, that the king's highneſs of this realm for the time being, with the advice of his council, ſhould make proclamations for the good order and government of this realm of *England*, *Wales*, and other his dominions, from time to time, for the defence of his regal dignity, as the caſes of neceſſity ſhall require.

"Therefore it is enacted, that always the king for the time being, with the advice of his council, whoſe names thereafter follow, (and all the great officers of ſtate are mentioned by the titles of their offices), for the time being, or the greater number of them, may ſet forth at all times, by authority of this

act, his proclamations, under ſuch penalties, and of ſuch ſort as to his highneſs and his council, or the more part of them ſhall ſeem requiſite; and that the ſame ſhall be obeyed, as though they were made by act of parliament, unleſs the king's highneſs diſpenſe with them under his great ſeal.

" Here, at one blow, is the whole legiſlative power put into the king's hands, and there was like to be no further uſe of parliaments, had this continued.

" Then there follows a clauſe, that would ſeem to qualify and moderate this exceſs of power; but it is altogether repugnant and contradictory in itſelf.

" And the conviction for any offence againſt any proclamation is directed, not to be by a jury, but by confeſſion, or lawful witneſs or proofs.

" And if any offender againſt any ſuch proclamation, after the offence committed, to avoid the penalty, wilfully depart the realm, he is adjudged a traitor.

" And the juſtices of peace are to put theſe proclamations into execution in every county. And by another act of 34 and 35 Hen. VIII. c. 23. nine of the great officers are made a *quorum*, &c. for they could not get half the number to act under it.

" The

"The act of 1 E. VI. c. 12. (which repeals the terrible law) begins with a mild and merciful preamble, and mentions that act of King H. VIII. which as this act of E. VI. does prudently obſerve, might ſeem to men of foreign realms, and to many of the king's ſubjects, very ſtrict, ſore, extreme, and terrible; this act of King E. VI. does therefore, by expreſs mention of that terrible act, wholly repeal it. And ſo that law (to uſe the Lord Bacon's phraſe) was honourably laid in its grave; and God grant it may never riſe again.

Repealed by K. Ed. VI.

The ingenuity of man cannot invent a reaſon or an argument againſt the propriety and policy of the diſpenſing power, which does not apply with redoubled force againſt this act of Henry VIII.; but no reaſon could prevent the operation of the ſtatute, whilſt it remained in force; and no reaſon could deſtroy the royal prerogative or power of diſpenſing with the obligations of certain ſtatutes by a *non obſtante*, till the legiſlature declared it illegal. I admit of the force, energy, and concluſion of all the reaſons and arguments againſt the one and againſt the other, not to prove their inefficacy or non-exiſtence, but to eſtabliſh the neceſſity of the repeal or annihilation of them both. I can-

Stronger arguments againſt this act of H. VIII. than againſt the diſpenſing power.

not help obſerving, that all the authorities for the diſpenſing prerogative are expreſs, open, and unambiguous; and that all the arguments (for expreſs authorities I find none,) againſt it are a *priori*, or *ab incongruo*.

The arguments in favour of this prerogative.

So violently were the two oppoſite opinions upon this point formerly agitated, that neither argument nor authority ſeemed to make the ſmalleſt impreſſion upon the adverſary. Thoſe, who maintained the prerogative argued, that ſtatutes, which provide for particular caſes, notwithſtanding any patent made to the contrary, with clauſe of *non obſtante*, or notwithſtanding any clauſe of *non obſtante* to the contrary &c.* evidently preſuppoſe the exiſtence, validity, and legality of ſuch *non obſtante* diſpenſations. They quoted caſes in point from the year books, and the explanations and applications of them, by the greateſt lawyers of all ſubſequent times, who are unequivocally clear and deciſive in their opinions upon the legality of ſuch diſpenſations. Thus lord chief juſtice Herbert for this purpoſe firſt quotes Fitzherbert, † "who lived near this time, and could not eaſily be miſtaken in the ſenſe of the year

Authorities of the greateſt lawyers in favour of this prerogative.

* Such Acts were, 4 Hen. IV. c. 31. Hen. VI. c. 23, &c.

† Herbert, ubi ſupra, p. 12, 13, 20.

books.

books. Next to him ſhall be Plowden, who, as all lawyers will confeſs, is as little likely to be miſtaken in the ſenſe of the year books, as any reporter we have. Next is my lord Coke." And when he quotes the words of my lord Vaughan, he ſays, "Whom I cite the oftner, becauſe every body remembers him, and it is very well known he was never guilty of ſtraining the king's prerogative too high." I wiſh not to charge and clog my readers attention with a dry tedious diſcuſſion of a point of obſolete law; but ſhall refer their final judgment and determination, whether a diſpenſing prerogative or power did or did not exiſt in the crown before the revolution, to the following parliamentary declarations, made upon very different occaſions, at the diſtance of above two hundred years from each other.

In the year 1413, 1 Henry V. * "The commons pray, that the ſtatutes for voiding of aliens out of the kingdom may be kept and executed; to which the king agreeth, ſaving his prerogative, that he *may diſpenſe with whom* he *pleaſes*; and upon this the commons anſwered, that their intent was *no other, nor never ſhall be* by the grace of God." Proved from act 1 Hen. V.

* Rot. Parl. 1 Hen. V. n. 15.

In the year 1628, 3 Car. I. in a debate between the two houſes of parliament upon the petition of right, Serjeant Glanville was deputed in a committee of both houſes of parliament in the painted chamber, to deliver the ſenſe of the houſe of commons, in which ſpeech, he ſays, * "I moſt humbly beſeech your lordſhips to weigh the reaſons, which I ſhall preſent, not as the ſenſe of myſelf, the weakeſt member of our houſe, but as the genuine and true ſenſe of the whole houſe of commons, conceived in a buſineſs debated there with the greateſt gravity and ſolemnity, with the greateſt concurrence of opinions and unanimity, that ever was in any buſineſs maturely agitated in that houſe." And then coming to ſpeak of the point in queſtion, he delivered the ſenſe of the commons in theſe words: "There is a truſt inſeparably repoſed in the perſons of the kings of England, but that truſt is regulated by law; for example, when ſtatutes are made to prohibit things not *mala in ſe*, but only *mala quia prohibita*, under certain forfeitures and penalties to accrue to the king, and to the informers, that ſhall ſue for the breach of them; the commons muſt, and ever will ac-

This prerogative acknowledged by the houſe of commons to Ch. I.

* Ruſhworth's Collections, Part i. p. 571.

knowledge a regal and ſovereign prerogative in the king touching ſuch ſtatutes; that it is in his majeſty's abſolute and undoubted power to grant diſpenſations to particular perſons, with the clauſes of *non obſtante*, to do as they might have done before thoſe ſtatutes, wherein his majeſty conferring grace and favour upon ſome, doth no wrong to others."

As it was the prevailing faſhion at the time of the revolution, not to allow that the diſpenſing power ever had been a prerogative of the crown, therefore have I before ſaid, in compliance with that faſhion, and in conformity with the ſtile of the bill of rights, that the only alterations introduced into the conſtitution at that time, were in the ſucceſſion and tenure of the crown. But I muſt now beg leave to obſerve, that I reckon this abridgment of the prerogative royal, as a third alteration. Tho' as to the main effect, it is perfectly immaterial, ſince the power can now be no more exerciſed by the king, whether he be prevented from it by the abridgment or deprivation of an old prerogative, or by a declaration, that he never was legally entitled unto it.

This abridgment of the royal prerogative was a third alteration made in the conſtitution at the revolution.

I have ſaid thus much of the exiſtence and extinction of the *diſpenſing power*, to convince my readers, that ſuch is the vigilance

Our ſecurity in the political equipoiſe of the conſtitution.

of every branch of the legiſlature upon each other, that we may reſt ſecure in their political equipoiſe, that none of them will outgrow or abſorb the other. If in the variety and change of political occurrences it ſhall be found requiſite either to abridge or enlarge the prerogative of the ſovereign, it behoves us to confide in the readineſs and zeal of our deputies and truſtees to effect it. Let no body look upon our preſent ſovereign, as leſs qualified and enabled to fulfil the executive functions of government, than his anceſtors, whoſe prerogatives were in ſome points more extenſive and numerous than his. What has been pruned off from the precarious branches of prerogative has been engrafted upon the double bearing ſtock of royal influence.

The effects of royal influence.

* "From the revolution in 1688 to the preſent time; in this period many laws have paſſed; as the bill of rights, the toleration-act, the act of ſettlement with its conditions, the act for uniting England with Scotland, and ſome others; which have aſſerted our liberties in more clear and emphatical terms; have regulated the ſucceſſion of the crown by parliament, as the exigences of religious and civil freedom required; have confirmed, and ex-

* Blak. Com. b. iv. c. 33. ſub. fin.

emplified

emplified the doctrine of reſiſtance, when the executive magiſtrate endeavours to ſubvert the conſtitution; have maintained the ſuperiority of the laws above the king, by pronouncing his diſpenſing power to be illegal; have indulged tender conſciences with every religious liberty conſiſtent with the ſafety of the ſtate; have eſtabliſhed triennial, ſince turned into ſeptennial elections of members to ſerve in parliament; have excluded certain officers from the houſe of commons; have reſtrained the king's pardon from obſtructing parliamentary impeachments; have imparted to all the lords an equal right of trying their fellow peers; have regulated trials for high treaſon; have afforded our poſterity a hope, that corruption of blood may one day be aboliſhed and forgotten; have (by the deſire of his preſent majeſty) ſet bounds to the civil liſt, and placed the adminiſtration of that revenue in hands, that are accountable to parliament; and have (by the like deſire) made the judges completely independent of the king, his miniſters, and his ſucceſſors. Yet, though theſe proviſions have in appearance and nominally reduced the ſtrength of the executive power to a much lower ebb than in the preceding period; if on the other hand we throw into the oppoſite ſcale (what

perhaps the immoderate reduction of the antient prerogative may have rendered in ſome degree neceſſary) the vaſt acquiſition of force ariſing from the riot-act, and the annual expence of a ſtanding army, and the vaſt acquiſition of perſonal attachment ariſing from the magnitude of the national debt, and the manner of levying theſe yearly millions, that are appropriated to pay the intereſt, we ſhall find, that the crown has gradually and imperceptibly gained almoſt as much influence, as it has apparently loſt in prerogative."

CHAP.

CHAP. XIII.

OF THE HOUSE OF PEERS.

OF the two branches of the legiſlature I ſhall firſt conſider the houſe of lords, of which Mr. Acherly, in his theoretic plan or directions for the Britannic conſtitution, ſpeaks thus: * "That the houſe of lords, beſides their part in the legiſlature, ſhould be inveſted with, and ſhould have, as *interwoven in their conſtitution*, theſe ſpecial powers and *privileges*, viz. that their right of peerage ſhould be deemed a ſpecial truſt for the whole government; that they ſhould have the *dernier* reſort only in all matters of *judicature*, and the ſole judicature of impeachments commenced and proſecuted by the commons; and that it ſhould be deemed an eſſential part of that judicature to take cognizances of thoſe impeachments, and to hear and determine the matters therein charged; and the reaſon he gave for inveſting them with the *dernier reſort* was, leſt *illegal* judgments in inferior judicatures ſhould creep in, and by little and little undermine and change

General end and ſpirit of the houſe of peers.

* Acherly's Brit. Conſ. Sec. xii. p. 45.

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the fundamental *form* and principles of this conſtitution, of which there might be ſome danger, in regard the *judges* would be neceſſarily of the king's *ſole* nomination and appointment.

" But in queſtions of *property*, where the claims on either ſide ſhall not be mixed with equity, this ultimate judicature ſhould (without additions to ſupply defects) give the ſame judgments, as are preſcribed by the ſtrict and poſitive laws in being; becauſe theſe laws ſhould be every man's *birthright*, and ſhould have no *controuler*, nor be *controuled* by any judicature (except only by that *power*, which is to be legiſlative, in which every man's conſent is to be involved;) for if a law and rule of property be made, and a man's caſe ſhall not be determined by it, the law and the authority of the makers would be vain and nugatory."

All laws at all times made with the advice of the great men.

In the earlieſt traces of any legiſlative acts paſſed in this country, we conſtantly find expreſs and unambiguous mention made of the advice and aſſiſtance of the great men *(magnates)* barons, prelates, archbiſhops, biſhops, vavaſours, earls, *(comites,)* &c. under which names, appellations, and deſcriptions ſome monarchical and ariſtocratical writers have indeed pretended to doubt, whether commoners

moners were included; but not even the ſtrongeſt republican writers have ever queſtioned or denied, that the firſt orders and ranks of men, or the nobility and dignified clergy were regularly ſummoned to parliament. Notwithſtanding the preſent rage againſt the ariſtocratic part of our conſtitution, it is curious to conſult the opinion of a very determined and ſtaunch republican * upon the ſubject. "An army," ſays he, "may as well conſiſt of ſoldiers without officers, or of officers without ſoldiers, as a commonwealth (eſpecially ſuch a one as is capable of greatneſs) conſiſt of a people without gentry, or of a gentry without a people. There is ſomething firſt in the making of a commonwealth; then in the governing of it; and laſt of all in the leading of its armies, which (though there be great divines, great lawyers, great men in all profeſſions) ſeems to be peculiar only to the genius of a gentleman."

Ariſtocracy neceſſary for a commonwealth.

In explaining and accounting for the ariſtocratical part of our conſtitution, it may be expected, that I ſhould trace not only the ſource and origin of this branch of the legiſlature, but alſo that I ſhould delineate

* James Harrington, the celebrated author of Oceana. Vid. Toland's Anglia libera, p. 59.

the different degrees, dignities, and denominations, by which it was formerly known and diſtinguiſhed. To do this ſatisfactorily will require a longer digreſſion than the intent and purport of this publication will admit of. Such of my readers, as may wiſh to acquire a more particular knowledge of this ſubject, will receive the moſt ſatisfactory information from the firſt volume of the learned Mr. Gurdon's hiſtory of the high court of parliament. Suffice it for me to obſerve, that our preſent ariſtocracy is much altered from what it formerly was, both in its relative and abſolute rights, privileges, powers, and duties.

Of the origin of the ariſtocratical part of our conſtitution.

In our earlieſt hiſtory the great council of the nation under the Saxons, who concurred with the king in paſſing laws, was called *Wittenagemotte*: * " a word compounded of Saxon and Britiſh, the former part of the word being *Saxon*, and the latter *Britiſh*. *Witta* is in Saxon, a wiſe man (i. e.) a nobleman; *Gemot*, in the Britiſh language, is a council or ſynod, ſo Wittenagemotte is a council of wiſe men or noblemen." According to the rude practices and habits of the warlike Saxons, they naturally allowed

The ancient wittenagemotte.

* Gurdon, vol. i. p. 21.

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an excluſive ſuperiority of knowledge or wiſdom to ſuch, as had acquired the then rare advantages of education, which were only enjoyed by the clergy, and ſome of the moſt opulent and powerful individuals of the community. They annexed not this attribute of wiſdom to theſe national counſellors, as a native and hereditary prerogative in the ſenſe, in which ſome modern illuminators ſpeak in deriſion of hereditary wiſe men and counſellors; but they preſumed very juſtly, that in the general average of men's intellectual faculties or talents, a ſuperiority or pre-eminence of wiſdom muſt neceſſarily attend the advantages of cultivation and improvement. The general diffuſion of knowledge through all ranks of people in the preſent age, has happily rendered this ancient diſtinction imperceptible to the preſent generation.

The ancient wittas called wiſe, from the advantages of their education.

There are obvious reaſons, why formerly the repreſentatives or delegates of the nation were not, as they now are, divided into two ſeparate bodies; for it is very evident, that the original ſpirit or principle of repreſentation in this community was grounded upon the poſſeſſion of property, not upon the numbers of individuals. * "The Britons called their

Property not numbers the original ground of repreſentation.

* Gurdon on Parliament, page 15.

councils

councils *Kifrithin*, which in the Britiſh language imports to debate and treat upon matters to be taken into conſideration for the public weal. The members of their councils were their *Edlins* *, which were of royal or princely race, and the governors of diſtricts or lords of villages: the huſbandmen, and all the common people, were eſteemed no more than ſervants, had no intereſt in land, being removeable at the will of their lord, they being villeins to their lords, were not admitted to ſit in council." Whence a copyholder, who by holding of the lord of the manor retains ſomething of this ancient tenure, is not even at this day qualified to vote for a member of parliament.

Why copyholders not qualified to vote.

The original Saxon ariſtocracy.

This principle of repreſenting the landed property of the nation continued after the whole ſyſtem of landed property was altered. For the Saxons undertook the conqueſt of this country upon a joint engagement to divide the conquered lands proportionably amongſt the leaders, as they had contributed their reſpective quotas to the enterprize. † The joint undertakers, who were

* Or *Ethelings*, hence Edgar Etheling meant Edgar of the blood royal, or kingly race.

† Gurdon on Parliament, p. 23.

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at firſt by the Latin authors termed *capitanei*, as having a capital or original right in the ſhares of the Britons lands; and theſe *capitanei* were not only ſharers with the kings in the conquered lands, but alſo in the adminiſtration of the government, being members of the king's great council, and therein had a deliberative authority in conſenting to laws and the higheſt matters of ſtate; they alſo had a judicial authority, being the ſupreme court of judicature of the nation."

* "Theſe colleagues, and their deſcendants, were the *Saxon nobles*, that were members of the great councils, the ſuitors of the court of the grand ſeigniory of the kingdom, all nobility at that time *ariſing from poſſeſſion*." In theſe ancient days, the ariſtocratical part of the community were known or diſtinguiſhed only from the reſt of the community, by rights, privileges, and prerogatives attached to the property they poſſeſſed; and as the greateſt of theſe conſiſted in their enjoying a ſhare in the legiſlature, it is unfair to conclude, that the commonalty or democratical part of the community were not formerly repreſented in parliament; for the perſons, who at that time repreſented the whole

Original nobility aroſe from property.

* Gurdon on Parliament, p. 163.

nation,

nation, were only diſtinguiſhed from the democratical part of it by this very right of repreſentation, which was not then elective, but hereditary; and if we conſider the nature of the duty, truſt, and rights of theſe delegates or repreſentatives of the public, we ſhall find them reſemble much more thoſe of the commoners, than of the peers of our preſent parliament.

The ancient members of the national council reſembled more our commoners, than our peers.

There are many points warmly controverted by antiquarians concerning the ancient Engliſh barons, who either attended the national aſſemblies or parliaments, at ſtated times *de more*, or were ſummoned on extraordinary occaſions to attend them. The whole epiſcopal order, and many abbots and priors were admitted by all to have been a conſtant part of the wittas in the wittenagemotes, and in all ſubſequent conventions of the nation down to the regular and ſeparate eſtabliſhment of a houſe of commons, by whatſoever deſcriptions they were diſtinguiſhed. It is not material to my preſent purpoſe to conſider, whether all, who were in thoſe times ſummoned to parliament, either as *barones majores*, *barones minores*, knights, or tenants in *capite*, or by any other titles, as earls, viſcounts, vavaſours, &c. were thereby ſo enobled, as that their heirs inherited their honours; there certainly

Whether ſummons to parliament anciently conferred nobility.

certainly have been inſtances, in which perſons have been ſummoned by writ to parliament, whoſe heirs were not thereby enobled *. However ſince there have been two regular and diſtinct houſes of parliament, it appears clear, that every writ of ſummons actually enobles the perſon, to whom it is iſſued, at leaſt if he ever take his ſeat in conſequence of the ſummons. But nobility is now generally conferred by letters patent of creation, concerning which there can be no doubt nor uncertainty.

As the landed property of the nation became more equally divided, ſo the democratical part of the community acquired a proportionate conſequence in the ſtate, and it became neceſſary to abridge and weaken the prerogatives and powers of the ariſtocratical part of it. The preſent privileges of peerage bear no proportion to the prerogatives, rights, and powers of the old Engliſh barons; but beſides allowing for the difference of the cuſtoms, practices, and prejudices of former times, it muſt be admitted, that the ancient *Witas* or members of the great national convention involved both the

The democratical power of the ſtate increaſed, and the ariſtocratical diminiſhed.

* Such were the caſes of Mothermer and Camois. Vid. Gurdon, vol. i. p. 188, againſt Ld. Coke's authority, (1 Inſ. 9. 16.)

duties and powers of a modern peer, and member of the houſe of commons, and conſequently concentered the ſeparate privileges of each in the ſame individual. For like peers they repreſented themſelves, and like commoners they repreſented all thoſe of the diviſion or diſtrict, the command, lordſhip, or property of which gave them their ſeat in the council. Thus may we obſerve how our admirable conſtitution has at all times been attentive to prune the luxuriances, and prevent the decay of each of its branches.

Spiritual lords of parliament.

The ariſtocratical part or branch of our legiſlature conſiſts at preſent of the *ſpiritual* and *temporal* lords. The ſpiritual lords * "conſiſt of two archbiſhops and twenty-four biſhops; and, at the diſſolution of monaſteries by Henry VIII. conſiſted likewiſe of twenty-ſix mitred abbots, and two priors; a very conſiderable body, and in thoſe times equal in number to the temporal nobility. All theſe hold, or are ſuppoſed to hold, certain ancient baronies under the king; for William the Conqueror thought proper to change the ſpiritual tenure of frankalmoign, or free alms, under which the biſhops held their lands during the Saxon government, into the feodal or Norman tenure by barony,

* Black. Com. b. i. c. ii. ſec. 2.

which ſubjected their eſtates to all civil charges and aſſeſſments, from which they were before exempt; and, in right of ſucceſſion to thoſe baronies, which were unalienable from their reſpective dignities, the biſhops and abbots obtained their ſeats in the houſe of lords. But though theſe lords ſpiritual are in the eye of the law a diſtinct eſtate from the lords temporal, and are ſo diſtinguiſhed in moſt of our acts of parliament, yet in practice they are uſually blended together under the one name of *the lords*; they intermix in their votes, and the majority of ſuch intermixture binds both eſtates. And from this want of a ſeparate aſſembly and ſeparate negative of the prelates, ſome writers have argued very cogently, that the lords ſpiritual and temporal are now in reality only one eſtate; which is unqueſtionably true in every effectual ſenſe, though the ancient diſtinction between them ſtill nominally continues. For if a bill ſhould paſs their houſe, there is no doubt of its validity, though every lord ſpiritual ſhould vote againſt it; of which Selden and Sir Edward Coke give many inſtances; as, on the other hand, I preſume it would be equally good, if the lords temporal preſent were inferior to the biſhops in

Lords *ſpiritual* and temporal one eſtate.

number, and every one of thoſe temporal lords gave his vote to reject the bills though this Sir Edward Coke ſeems to doubt of."

It was in the laſt century very warmly debated, whether the biſhops could retain their ſeats, and judge and vote in capital caſes and queſtions. Without however going into the different arguments and reaſons for or againſt the point, I ſhall hope that the very forms of ſuch capital acts of parliament will ſufficiently prove, that the conſtitution ſuppoſes the biſhops preſent, and as active in paſſing theſe as any other bills. I need not ſay, that the right, by which the biſhops ſit in parliament, is purely a *civil* not a *ſpiritual* right; and if they have at one time been ſo attentive to their *ſpiritual* ſacerdotal character, as to hold themſelves bound by the canons of the church not to aſſiſt at or judge any criminal cauſe, we find them at another equally active with the temporal lords in maintaining in their civil capacity, as lords of parliament, their right or rather duty to judge cauſes of the higheſt criminal nature poſſible; for it is equally a matter of blood, whether a man's life be taken away by attainder or by impeachment. And by the canon law, and by an ordinance made at the council

Of the biſhops' right to vote in capital caſes.

council at Weſtminſter, in 21 Hen. II. * all clergymen were forbidden *agitare judicium ſanguinis:* now there cannot be a more convincing argument, that the canon law, and other eccleſiaſtical ordinances acquire a coercive or binding force, only in as much as they are countenanced or adopted by the civil legiſlature, than the two following proteſtations, which I ſhall quote from the rolls of parliament. † "The firſt was made by the ſpiritual lords, (11 Ric. II. A. D. 1387) when they refuſed to aſſiſt at the trial of divers lords and others being appealed of high treaſon and other miſdemeanors, ſaving their *right* (as peers of parliament) nevertheleſs to be preſent in parliament. The other was (in the 28th of Hen. VI. A. D. 1449.) when William de la Pool, Earl Marſhall, and Duke of Suffolk, was impeached by the commons of high treaſon, and he required of the king, that he might be eſpecially accuſed, and be heard to anſwer, and ſo ſubmitted himſelf to the king's pleaſure; whereupon the king had undertaken to paſs judgment upon the matter contained in the bill

* Selden's Judicature in Parliament, p. 151.

† Vid. alſo the Rights of the Biſhops to judge in all capital caſes, printed in 1680.

for high treaſon out of parliament ſolely and by himſelf in an extra-judicial manner.

The biſhops claim their right to be preſent in all parliaments, and on all occaſions.

* "In the name of God, amen: Whereas *by the law and cuſtom of* the kingdom of England, it doth belong to the archbiſhop of Canterbury for the time being, and the other his ſuffragans, brethren, and fellow biſhops, abbots, and priors, and all their other prelates whatſoever, who hold by barony of our lord the king, to be perſonally preſent in all parliaments whatſoever, as peers of the kingdom, and there to conſult, treat of, ordain, conſtitute, and determine of the affairs of the kingdom, and other things there uſually treated of, together with the reſt of the peers of the ſaid kingdom, and others having intereſt there, and to do all things, which there may happen to be done. In all and every of which, we William archbiſhop of Canterbury, primate of all England, and legate of the apoſtolic ſee, do proteſt for ourſelves, our ſuffragans, and fellow biſhops, and all the abbots, priors, and prelates aforeſaid, and every one of them doth proteſt by themſelves, or by his proxy, if ſo he was preſent, both publicly and expreſsly, that we

* Rot. Parl. 11 Ric. 2.

intend,

intend, and do intend, and every one of us will in this preſent parliament, and in all others, be preſent as peers of the ſaid kingdom, in the uſual manner, to conſider of, treat, enact, conſtitute, and determine, and to do all other things with others, who have power of being preſent in the ſame, our eſtate and order, to every one of us in all things ſaved unto us entire. But becauſe in this preſent parliament ſome matters will be treated of, in which it is not lawful for us *, or any of us, according to the inſtitutions of the holy canons, or canonic law, in anywiſe to be perſonally preſent, therefore for ourſelves, and for every one of us, we proteſt, and every one of us here preſent doth proteſt, that we intend not, neither will, as by the law we cannot, neither doth any of us intend, nor will any of us in anywiſe be preſent in this preſent parliament, whilſt any of thoſe matters are debated, or ſhall be debated of. But upon that account, we and every one of us will abſent ourſelves; the right of our peerage, and the right of every one of us, being preſent in the ſaid parliament,

Biſhops forbidden by canon law, to debate upon capital caſes.

* Note this diverſity: in their eccleſiaſtical or clerical capacity they have obligations which in their lay capacity they do not avow; for though they be ſubject to the canon law, they are alſo fully ſubject to the municipal civil law, and in no manner exempt from it.

ment, as to all and every thing there to be done agreeable to our eſtate and order in all things to every one of us ſaved entire. Moreover we proteſt, and every one of us doth proteſt, that by reaſon of our abſence as aforeſaid, we intend not, nor will, neither doth any of us intend or will, that the proceſs had or to be had in this preſent parliament in the matters aforeſaid, in which we cannot and ought not as aforeſaid to be preſent, as to what relates to us, or any of us, ſhall in time to come be in anywiſe impugned, weakened, or repealed."

They claim the right for their ſucceſſors to be preſent in parliament, at all times, and on all occaſions.

* "And forthwith the Viſcount Beaumont, on the behalf of the ſaid lords ſpiritual and temporal, and by their advice, aſſent, and deſire, recited, ſaid, and declared to the king's highneſs, that this, that was ſo decreed concerning the perſon of the ſaid duke, William de la Pool, duke of Suffolk, proceeded not by their advice and counſel, but was done by the king's own demeanance and rule; therefore they beſought the king, that this their ſaying might be enacted in the parliament roll, for their more declaration hereafter, with this proteſtation, that it ſhould not be, nor turn in prejudice nor derogation of them,

* Rot. Parl. 28 Hen. VI.

their

their heirs, nor of their ſucceſſors in time coming, but that they have and enjoy their liberties and freedoms in caſe of their peerage hereafter, as freely and as largely as they or any of their anceſtors had and enjoyed before this time."

The rights of the lords ſpiritual in parliament claimed for ever.

It cannot be pretended, that the word *ſpiritual* is here inſerted without its full meaning, for the repreſentatives of the *ſpiritual* lords are deſcribed by the word *ſucceſſors*, as the repreſentatives of the *temporal* lords are by the word *heirs*; and neither is applicable to the other. Now if this canon law or eccleſiaſtical ordinance were paramount to the municipal law, from which they acquired their right of ſitting in parliament, then muſt it be allowed, that the biſhops had no right to judge or vote in capital caſes; and every act of parliament affecting the life of a perſon, muſt have been paſſed without the advice and conſent of the lords ſpiritual; whereas no act appears upon our ſtatute books, expreſſed to have been enacted with the advice and conſent of the lords *temporal* only, and therefore I conclude againſt Mr. Selden, and many others, that the conſtitution knows of no difference of parliamentary duty, right, power, or juriſdiction, between the *ſpiritual* and the *temporal lords*; and I ſhall

No difference between the rights of the lords *ſpiritual* and *temporal* in parliament.

ſhall hereafter ſpeak indiſcriminately of their common rights, duties, and privileges, which the conſtitution has veſted in them as peers of parliament.

Temporal lords.

* "The lords temporal conſiſt of all the peers of the realm, (the biſhops not being in ſtrictneſs held to be ſuch, but merely lords of parliament) by whatever title of nobility diſtinguiſhed, dukes, marquiſſes, earls, viſcounts, or barons; of which dignities we ſhall ſpeak more hereafter. Some of theſe ſit by deſcent, as do all ancient peers; ſome by creation, as do all new-made ones; others, ſince the union with Scotland, by election, which is the caſe of the ſixteen peers, who repreſent the body of the Scots nobility. Their number is indefinite, and may be increaſed at will by the power of the crown; and once, in the reign of queen Anne, there was an inſtance of creating no leſs than twelve together; in contemplation of which, in the reign of king George I. a bill paſſed the houſe of lords, and was countenanced by the then miniſtry, for limiting the number of the peerage. This was thought by ſome to promiſe a great acquiſition to the conſtitution, by reſtraining the prerogative from

Bill to limit the number of peers paſſed the lords, and was thrown out by the commons.

* Black. Com. b. i. c. 2.

gaining

gaining the aſcendant in that auguſt aſſembly, by pouring in at pleaſure an unlimited number of new-created lords. But the bill was ill-reliſhed, and miſcarried in the houſe of commons, whoſe leading members were then deſirous to keep the avenues to the other houſe as open and eaſy as poſſible."

It will be foreign from my purpoſe to attempt an inveſtigation of the original creation or diſtinction of the nobility of this realm; or even of the manner and time of their becoming a conſtitutional branch of the legiſlature. After the murder of king Charles the Firſt, the houſe of commons, on the 6th February 1648, * "voted that the houſe of peers in parliament was uſeleſs and dangerous, and ought to be aboliſhed; and that an act ſhould be brought in for that purpoſe: as alſo, that the peers ſhould not be exempted from arreſts; but did admit that they ſhould be capable of being *knights* and *burgeſſes* in parliament, in caſe they were elected." This was a moſt audacious uſurpation by the houſe of commons (or whatever that convention of the regicide party were to be called) upon the very eſſence of the conſtitution; and the enormity of the

The houſe of lords voted uſeleſs in 1648.

* Dugdale's Short View of the late Troubles, c. xxxiii. p. 385.

precedent

precedent gave riſe to many elaborate, and ſome erudite, but all violent diſſertations upon the original ſeparate rights of the lords and commons.

Diſputes about the original rights of the commoners in legiſlating.

Theſe diſputes became at laſt reſolved into this ſimple queſtion, whether the commons of England, repreſented by knights, citizens, and burgeſſes freely choſen, had formerly (viz. before the 49th Hen. III. A. D. 1274) any vote or ſhare in making the laws of the kingdom, or whether they were not made by the king, with the advice and conſent of the *magnates*, *proceres*, *optimates*, *nobiles*, prelates, abbots, *comites*, earls, barons, wites, *ſapientes*, &c. ſummoned by the king? no deſcription of whom anſwers to the modern idea of a member of the houſe of commons. Either alternative of this warmly conteſted diſpute, may, I conceive, be ſafely adopted without the ſlighteſt abatement of that reſpect and ſubmiſſion, which every loyal ſubject owes to the preſent form of the Britiſh conſtitution.

Leveller's horror of ariſtocracy.

The predominant feature of the republican, or independent, or levelling party has ever been a ſovereign horror of any ſuperiority of power in others; this therefore operated generally againſt the ariſtocratic part of the conſtitution; for the commonalty were in many reſpects

reſpects certainly inferior to the peers of the realm. The crown and the mitre however were the hateful marks, at which they have unwearily directed their rancorous ſhafts of diſcontent. It has therefore been ſtrenuouſly and artfully argued, ſuppoſed, and affirmed, that the ſpiritual lords make no conſtitutional neceſſary part of the houſe of peers. * "The ſecond eſtate is conſtituted of both the *ſpiritual* and *temporal lords* jointly; for" (ſay they) "though the *archbiſhops* and *biſhops* are denominated *ſpiritual*, yet they ſit in parliament as *temporal* barons only, (i. e.) by reaſon of the *temporal baronies* annexed to their *biſhopricks*, and not as they are *ſpiritual perſons*. And they further urge, in confirmation of their opinion, firſt, That no biſhop, notwithſtanding his election, conſecration, confirmation, &c. can be a *lord* of, or ſit in *parliament*, till the king has granted to him

The ſecond eſtate conſiſts of the lords ſpiritual and temporal.

How the lords ſpiritual are qualified to ſit in parliament.

* Lex Parliamentaria, p. 3. which refers to Cotton's Records, 709. 710. 4 Inſt. 1. Hales of Parliaments, i. Finch's Nemotecnia, lib. ii. c. 1. Sadler's Rights of the Kingdom, p. 79 to 93. Kelway's Reports, 184. Stanif. Pl. Cor. 153. See Bagſhaw's Readings, p. 17 to 21. N. B. Though this ſtatute was repealed by queen Mary, yet that repeal was repealed by queen Elizabeth, &c. as the parliament at Bury, 24 Edw. I. 1 Eliz. all the acts about religion paſſed *diſſentientibus epiſcopis*. See Journal Dom. Procer. 11 H. VII. 27 Bro. Par. 107. Kelway, 184.

the

the temporalities of the biſhoprick. Secondly, That by virtue of the ſtatute 1 Edw. VI. c. 2. ſtill in force, the king may conſtitute biſhops by his letters patent only, without any election or conſecration *; and thirdly, That

* Whoever believes that our bleſſed Lord has eſtabliſhed a church upon earth, muſt never loſe ſight of the difference between the real ſpiritual right, power, and juriſdiction of the paſtors of that church, and the right, power, and juriſdiction, which they may derive from the civil eſtabliſhment of religion. The real ſpiritual elevation to the epiſcopal order or dignity can only be effected by the conſecration, which no ſovereign of this realm ever pretended or attempted to perform; and the validity of this conſecration muſt depend upon the capacities or ſpiritual qualifications of the parties conſecrating and conſecrated; if the latter be not in holy orders, and the former rightly ordained and conſecrated, no one can be ſo raiſed to the ſpiritual dignity of a biſhop in the church of Chriſt, as to command the ſpiritual obedience or ſubmiſſion of any member of his church. Neither the recommendation by *conge d'elire*, letter miſſive, nor nomination and preſentation by letters patent under the great ſeal, nor confirmation, inveſtiture, nor admiſſion to the temporalities by the king, can change the quality of a man from *lay* to *clerical*, nor elevate him from ſimple prieſthood to the dignity of a biſhop. The caſe is ſimilar in the *preſentations*, *inſtitutions*, and *inductions* of the inferior clergy. The *preſentation* of the clerk to the biſhop by the patron is a mere civil right given by the laws, which conſtitute the civil eſtabliſhment of religion, and may be exerciſed by a *preſbyterian*, *quaker*, or *Jew*, as well as by a member of the eſtabliſhed church. By the *inſtitution*, the biſhop, in exerciſe of his real *ſpiritual* power, or paſtoral juriſdiction over a part of the church of Chriſt

That parliaments have been, and may be holden, *excluſo clero*, excluſive of the biſhops and clergy, and that ſome of our moſt beneficial ſtatutes have been enacted, whereto the whole body of the clergy diſſented; all which, they ſay, prove the biſhops to be no *eſſential part*, or any of the *three eſtates of parliament*. And in *Trinity* term, 7 H. VIII. it is agreed by all the judges of *England*, that the *king* may well hold his *parliament* by himſelf, and his *lords temporal* and *commons*, without any *biſhops* or ſpiritual lords at all.

Chriſt commits the care of the ſouls of the pariſh to the charge of the clerk, who from that time becomes the *ſpiritual* ſubject of his biſhop. *Inſtitution* therefore is properly the inveſtiture of the *ſpiritual* part of the benefice. The *induction* is directed by the civil eſtabliſhment of religion, and is nothing more than an open and notorious delivery over to the clerk, of the corporal poſſeſſion of the *church*, to notify to the pariſhoners their new miniſter, to whom tythes are to be paid; and this is properly the inveſtiture of the temporal part of the benefice. Mr. Collier, ſpeaking of Biſhop Bonner's commiſſion to execute all the branches of epiſcopal authority under his highneſs Lord Cromwell, vicegerent and vicar general, &c. ſays, (pt. ii. b. iii. p. 169.) "But if the church is a diſtinct and entire ſociety, if in pure ſpirituals ſhe is conſtituted independent on all the kings on the earth; if ſhe is furniſhed with powers ſufficient to anſwer the ends of her charter; if theſe powers were ſettled by our Saviour upon the apoſtles and their ſucceſſors to the world's end; if the hierarchy can make out this title, then muſt I crave leave to think thoſe, who ſuggeſted the draught of this inſtrument were no great divines," &c.

However

The conſtitution neither requires nor takes notice of the abſence of the biſhops.

However it now appears unqueſtionable, that ſince the conſtitution excludes the biſhops from judging and voting in no caſe whatever, it takes no more notice of their voluntary perſonal abſence or diſſent, than of the diſcretionary ſeceſſion or proteſt of any temporal peer; for the vote of the majority binds the diſſenters and proteſters as fully, as if they had aſſented to the queſtion of debate.

Right of proteſting, and of voting by proxy.

The right of entering a proteſt is a ſpecial privilege of the houſe of lords, as is that of voting by proxy *; but it weakens not the voice of the majority in any ſhape or degree whatever.

* So late even as the 35 Edward III. A. D. 1360, ſeveral peereſſes were ſummoned to parliament, as Mary counteſs of Arundell, and nine others at the ſame time; they were called *ad colloquium & tractatum*, by their proxies, a privilege peculiar to the peerage, to appear and act by proxy. King Edgar's charter to the Abbey of Crowland, A. D. 961, was with the conſent of the nobles and abbeſſes, who ſubſcribed it; for many abbeſſes were formerly ſummoned to parliament, (Gurdon, vol. i. p. 202.) In thoſe ancient times the lords were not obliged to make barons only their proxies in the houſe of lords, as the cuſtom now is, but the biſhops and parliamentary abbots uſually gave their letters of proxy to prebendaries, parſons, canoniſts, and ſuch like, as appear in the Journals of the houſe of lords; but ſince the firſt year of *Henry* VIII, there appear in the Journals no proxies, but ſuch as were barons of parliament.

See Dugd. Summ. to Parl. 265. But note that the ſummons was not of a parliament.

The

The firſt act of queen Elizabeth, to *reſtore to the crown the ancient juriſdiction over the eſtate eccleſiaſtical and ſpiritual, and for aboliſhing all foreign powers repugnant to the ſame* is made at the ſpecial requeſt of *her faithful and obedient ſubjects the lords ſpiritual and temporal.* The next act, *For the uniformity of common prayer and ſervice in the church, and adminiſtration of the ſacraments*, is enacted by the authority of this *preſent parliament*, and *with the aſſent of the lords and commons*, without once mentioning the lords *ſpiritual* through the whole act. Now although each ſpiritual lord of parliament had diſſented from this act, and proteſted againſt it in the moſt ſolemn manner, yet their conſent to it is as much involved and included in the act, as if they had conſented, and had been eſpecially mentioned and deſcribed, as they were in the firſt act. And on the other ſide, although no biſhop may have been preſent, or had voted for the paſſing of the Act * for *the attainder of thoſe, who were concerned in the gunpowder treaſon*, yet it is particularly recited to have been paſſed at the ſpecial requeſt of his majeſty's *moſt loyal, faithful, and true hearted ſubjects, the lords ſpiritual and temporal, and*

The conſent of the lords *ſpiritual* included equally whether mentioned or not mentioned in the act.

* Jac. I. c. ii.

commons; which clearly ſhews, that as the conſtitution does not require their abſence from any parliamentary proceeding, whether capital or other, ſo are they always ſuppoſed, or rather enjoined, to aſſiſt and vote like other peers of parliament, as their conſent, even in ſuch direct capital acts, is expreſſed to be included.

The advantage of the houſe of peers in our conſtitution.

The late judge Blackiſton with great propriety ſets forth the utility, expediency, and advantage of an hereditary houſe of peers in our conſtitution. * "A body of nobility is alſo more peculiarly neceſſary in our mixed and compounded conſtitution, in order to ſupport the rights of both the crown and the people, by forming a barrier to withſtand the encroachments of both. It creates and preſerves that gradual ſcale of dignity, which proceeds from the peaſant to the prince; riſing like a pyramid from a broad foundation, and diminiſhing to a point as it riſes. It is this aſcending and contracting proportion, that adds ſtability to any government; for when the departure is ſudden from one extreme to another, we may pronounce that ſtate to be precarious. The nobility therefore are the pillars, which are reared from

* Black. Com. b. i. c. 2.

among the people more immediately to ſupport the throne; and if that falls, they muſt alſo be buried under its ruins. Accordingly when in the laſt century the commons had determined to extirpate monarchy, they alſo voted the houſe of lords to be uſeleſs and dangerous. And ſince titles of nobility are thus expedient in the ſtate, it is alſo expedient, that their owners ſhould form an independent and ſeparate branch of the legiſlature. If they were confounded with the maſs of the people, and like them had only a vote in electing repreſentatives, their privileges would ſoon be borne down, and overwhelmed by the popular torrent, which would effectually level all diſtinctions. It is therefore highly neceſſary, that the body of nobles ſhould have a diſtinct aſſembly, diſtinct deliberations, and diſtinct powers from the commons."

Reaſons why the privileges of the peers are hereditary.

* " The peers of the realm are by their birth hereditary counſellors of the crown, and may be called together by the king to impart their advice in all matters of importance to the realm, either in time of parliament, or, which hath been their principal uſe, when there is no parliament in being. Accordingly

The uſe, prerogatives, and duties of the peers.

* Black. Com. b. i. c. 5.

Bracton ſpeaking of the nobility of his time ſays, they might properly be called '*conſules, a conſulendo; reges enim tales ſibi aſſociant ad conſulendum.*' And in our law books it is laid down, that peers are created for two reaſons; 1. *Ad conſulendum*; 2. *Ad defendendum regem:* for which reaſons the law gives them certain great and high privileges; ſuch as freedom from arreſts, &c. even when no parliament is ſitting; becauſe the law intends, that they are always aſſiſting the king with their counſel for the commonwealth; or keeping the realm in ſafety by their proweſs and valour."

The houſe of peers the ſupreme court of judicature.

* The houſe of peers is the ſupreme court of judicature in the kingdom, having at preſent no original juriſdiction over cauſes, but only upon appeals and writs of error, to rectify any injuſtice or miſtake of the law committed by the courts below. To this authority they ſucceeded of courſe, upon the diſſolution of the *aula regia.* For, as the barons of parliament were conſtituent members of that court, and the reſt of its juriſdiction was dealt out to other tribunals, over which the great officers, who accompanied thoſe barons were reſpectively delegated to provide, it followed,

* Black. Com. b. iii. c. 4.

that

that the right of receiving appeals, and ſuperintending all other juriſdictions, ſtill remained in that noble aſſembly, from which every other great court was derived. They are therefore in all cauſes the laſt reſort, from whoſe judgment no farther appeal is permitted; but every ſubordinate tribunal muſt conform to their determinations; the law repoſing an entire confidence in the honour and conſcience of the noble perſons, who compoſe this important aſſembly, that they will make themſelves maſters of thoſe queſtions, upon which they undertake to decide; ſince upon their deciſion all property muſt finally depend."

This juriſdiction of the houſe of peers is more clearly repreſented by Mr. Erſkine, in his argument upon the rights of juries, in the caſe of the Dean of St. Aſaph: * "This popular judicature was not confined to particular diſtricts, or to inferior ſuits and miſdemeanors, but pervaded the whole legal conſtitution; for when the Conqueror, to increaſe the influence of his crown, erected that

The peers were originally jurors in the king's court.

* Page 128, 129. This ingenious and inſtructive argument will ſerve as a correct conſtitutional chart for juries to direct their courſe by in determining the fates of their countrymen, againſt any ſuperior awe or collateral bias.

great ſuperintending court of juſtice in his own palace, to receive appeals criminal and civil from every court in the kingdom, and placed at the head of it the *capitalis juſticiarius totius Angliæ*, of whoſe original authority the chief juſtice of this court is but a partial and feeble emanation, even that great magiſtrate was in the *aula regis* merely miniſterial; every one of the king's tenants, who owed him ſervice in right of a barony had a ſeat and a voice in that high tribunal; and the office of juſticiar was but to record and to enforce their judgments.

" In the reign of king Edward the Firſt, when this great office was aboliſhed, and the preſent courts at Weſtminſter eſtabliſhed by a diſtribution of its powers, the barons preſerved that ſupreme ſuperintending juriſdiction, which never belonged to the juſticiar, but to themſelves only, as the jurors in the king's court; a juriſdiction which, when nobility, from being territorial and feodal, became perſonal and honorary, was aſſumed and exerciſed by the peers of England, who without any delegation of judicial authority from the crown, form to this day the ſupreme and final court of Engliſh law, judging in the laſt reſort for the whole kingdom, and ſitting upon the lives of the peerage, in their

their ancient and genuine character, as the peers of one another."

The high court of parliament is the ſupreme court in the kingdom for the trial of great and enormous offenders, whether lords or commons, in the method of parliamentary impeachment; for an impeachment before the lords by the commons of Great Britain is a preſentment to the moſt high and ſupreme court of criminal juriſdiction, by the moſt ſolemn grand inqueſt of the whole kingdom. * A commoner cannot however be impeached before the lords for any capital offence, but only for high miſdemeanors; a peer may be impeached for any crime. And they uſually (in caſe of the impeachment of a peer for treaſon) addreſs the crown to appoint a lord high ſteward for the greater dignity and regularity of their proceedings. The articles of impeachment are a kind of bills of indictment found by the houſe of commons, and afterwards tried by the lords; who are in caſes of miſdemeanors conſidered not only as their own peers, but as the peers of the whole nation.

The houſe of peers is the ſupreme court for parliamentary impeachments.

The office of a lord high ſteward.

* Black. Com. b. iv. c. xix. and Hale's Pl. Cor. Pt. ii. 150.

* " The execution of all our laws hath been long ſince diſtributed by *parliament* out of inferior courts in ſuch ſort, as the ſubjects were directed where to complain, and the juſtices how to redreſs wrongs, and puniſh offences; and this may be the reaſon of the judges opinion in Thorp's caſe, 31 Henry VI. num. 37.

" That actions at common law are not determined in this high court of *parliament*, yet complaints have ever been received in *parliaments*, as well of private wrongs as public offences. And according to the quality of the perſon, and nature of the offence, they have been retained or referred to the common law.

They were not anciently bound to try any offender who was not their peer.

" Touching the quality of the perſon, the lords of the *parliament* did not anciently try any offenders, how great ſoever the offence was, unleſs he were their peer. As by that of 4 Edward III. num. 2. where when the king commanded the lords to give judgment on *Simon de Bereford* and divers others alſo, who were not their peers, for the murther of Edward II. and the deſtruction of the earl of *Kent* ſon of Edward the Firſt, a proviſo and agreement was made and recorded in

* Selden's Judic. in Parliament, p. 1. & ſeq.

theſe

theſe words; *Et eſt aſſenſu & accord.* &c. and it is aſſented and accorded by our lord the king, and all the grandees in full *parliament*, that albeit the peers as judges of the *parliament* have took upon them and rendred the ſaid judgment, &c. that yet the ſaid peers, who now are or ſhall be in time to come, be not bound or charged to render judgments upon others than peers; nor that the peers of the land have power to do this, but thereof ever to be diſcharged and acquitted; and that the aforeſaid judgment rendered be not drawn to example or conſequence in time to come, whereby the ſaid peers ſhall do contrary to the laws of the land, if the like caſe happen, which God forbid. 4 Edward III. num. 6. This proviſo and agreement was made by the lords and commons, and it had theſe reſpects: Firſt, to ſatisfy the commons, that the lords by theſe judgments intended not to alter the courſe of the common-law, and therefore they diſclaimed, that they had power to do this, and confeſs it was contrary to the law of the land.

Their right and obligation to try offenders aſcertained.

" Secondly, To preſerve their own right to judge none but the peers in caſe of life and death. For then the king's ſteward is to ſit in the chancellor's place, and the lords are to

In judging on the life and death of their peers, the lord high ſteward ſits for the chancellor and

the peers are both tryers and judges.

to be tryers and judges; and ſo by judging others, than their peers deſcended below their degrees, for none but peers are ſo to be tried and judged. It is otherwiſe in caſes of miſdemeanors; then the chancellor keeps his place, and the lords are only judges and not tryers; they may command a jury to be impannelled.

" For trial of the facts, if the truth appear not by the parties' anſwer, the teſtimonies are exhibited as 1 R. II. in the caſe of *Alice Peirce*. Here ariſeth a queſtion:

The ſpiritual lords triable by their peers in parliament.

" *Whether the ſpiritual lords de jure, are triable by their peers, or no?*

" Out of *parliament* they are not to be tried by the peers; but the doubt is, whether in time of *parliament*, they are to be ſo tried, or no? To me it ſeems they may, if the matter be moved againſt them in time of *parliament*. For as it is in the *parliament* at *York*, 15 Ed. II. in the act for the repeal of the *Spencers* baniſhment, they are peers in *parliament*. Note, that the petition for the repeal ſaith, that the biſhops are peers in *parliament*. The biſhops name themſelves peers of the land; and the chancellor to the king, nd the act ſtiles them peers of the land in *parliament*.

" There be divers precedents alſo of the trial

trial of biſhops by their peers in *parliament*, as well for capital offences as miſdemeanors, whereof they have been accuſed in *parliament*."

The juſtice and equity of the houſe of peers.

I cannot better finiſh this ſubject of the peers, than by citing the honourable teſtimony made of their juſtice and equity, by a very judicious modern writer. * "If we turn our views towards the houſe of lords, we ſhall find, that they have alſo conſtantly taken care, that their peculiar privileges ſhould not prove impediments to the common juſtice, which is due to the reſt of the people. They have conſtantly agreed to every juſt propoſal, that has been made to them on that ſubject by the commons; and indeed if we conſider the numerous and oppreſſive privileges claimed by the *nobles* in moſt other countries, and the vehement ſpirit, with which they are commonly aſſerted, we ſhall think it no ſmall praiſe to the body of the nobility in England (and alſo to the nature of that government, of which they make a part) that it has been by their free conſent, that their privileges have been confined to what they now are, that is to ſay, to no more in general, than what is neceſſary to the accom-

* De Lolme on the Conſ. of England, p. 373.

pliſhment

pliſhment of the end, and conſtitutional deſign of that houſe.

Their incorruptibility in judging.

" In the exerciſe of their judicial authority with regard to civil matters, the lords have manifeſted a ſpirit of equity no wiſe inferior to that, which they have ſhewn in their legiſlative capacity. They have, in the diſcharge of that function (which of all others is ſo liable to create temptations) ſhewn an uncorruptneſs really ſuperior to what any judicial aſſembly in any other nation can boaſt. Nor do I think, that I run any riſk of being contradicted, when I ſay that the conduct of the houſe of lords, in their civil judicial capacity, has conſtantly been ſuch as has kept them above the reach of even ſuſpicion or ſlander.

" Even that privilege, which they enjoy, of excluſively trying their own members in caſe of any accuſation, that may affect their life (a privilege which we might at firſt ſight think repugnant to the idea of a regular government, and even alarming to the reſt of the people) has conſtantly been made uſe of by the lords to do juſtice to their fellow ſubjects; and if we caſt our eyes either on the collection of the *ſtate trials*, or on the hiſtory of England, we ſhall find very few examples, if any, of a peer really guilty of the

the offence laid to his charge, that has derived any advantage from his not being tried by a jury of *commoners.*"

Before I enter upon the third branch of the legiſlature, I beg leave to ſubmit to my readers one obvious reflection upon the excellent conſtitution of the ariſtocratical power or eſtate in our government, which beſides all the active and paſſive checks, which it commands upon the two other branches of the legiſlature, provides alſo a natural and intrinſic ſecurity to the people againſt incroachments, inſolence, and oppreſſions, but too frequently the fatal effects of ſuperiority and preeminence of rank in other countries. By whatever privileges or prerogatives the peers are ſtill diſtinguiſhed from or elevated above the people or commoners in this country, they are enjoyed ſolely and perſonally by the peers themſelves, but do not, unleſs in ſome very ſlight inſtances, affect any part of their families*, who, though commonly called *noble*, yet in reality remain commoners, and are repreſented in parliament by the third eſtate of the kingdom. So the

Security againſt the inſolence and oppreſſions of the nobility.

* Such are the right of peereſſes to be tried by the peers; ſome honourable appellations and diſtinctions of their immediate children in rank and precedency, &c.

lords

lords *ſpiritual*, whoſe dignities are not hereditary, can have no temptation nor inducement to oppreſs, vilify, or injure that eſtate, of which their own family is and muſt for ever remain a part. The *temporal* lords, who in the ordinary courſe of nature have generally ſpent the moſt active, ſpirited, and ambitious part of their lives as commoners, and moſt frequently as members of the houſe of commons, and who at moſt times have more than one of their family in the houſe of commons, whilſt they enjoy their hereditary ſeats in the houſe of peers, are for theſe, as well as the more generous and elevated motives of patriotiſm, ſo congenial with their noble breaſts, emphatically withholden from attempting any encroachments or oppreſſions, or even feeling a ſenſe of contempt, and much leſs of oppreſſive inſolence, towards the third and moſt numerous eſtate of the community.

CHAP.

CHAP. XIV.

OF THE HOUSE OF COMMONS.

Knights, citizens, and burgeſſes the repreſentatives of the people.

*"THE *third eſtate*, of which we ſhall herein principally treat, is on all hands confeſſed to conſiſt of the *knights*, *citizens*, and *burgeſſes*, with the barons of the *cinque-ports*; all which being at this day elected by the free votes of the freemen of *Great-Britain*, are properly eſteemed the repreſentative body of the people, and conſtitute that part of the parliament, uſually called the *houſe of commons*. (N.B.) The ancient *modus tenendi parl.* reckons up ſix degrees or orders of parliament, but that diviſion cannot be denominated *ſix eſtates*."

Their numbers formerly varied according to the diſcretion of the ſheriffs.

"The numbers of the *commons* I find to have been formerly variant, according as the ſheriffs of counties (from what motive is uncertain) were pleaſed to direct their precepts to the ſeveral cities or boroughs within their reſpective counties, or as the ſame ſheriffs made their returns thereupon; but indeed another cauſe of this variation was, that it was uſual for the prince, on his acceſſion to

* Lex Parliamentaria, p. 4, 5, 6, 7.

the

Kings formerly at their acceſſion granted charters to towns to ſend repreſentatives to parliament.

the throne, to grant charters to ancient demeſne vills, and other popular towns, thereby erecting them into *free boroughs*, and this conſequently gave them a right to be repreſented in parliament; and by this artifice, among others, the crown advanced its intereſts in the houſe of commons.

"For it muſt be confeſſed, that by the ancient conſtitution, there were no repreſentatives of the commons, as commons in parliament, beſides the knights for the ſhires, the barons for the cinque-ports *, the citizens for the cities, and the burgeſſes for the ancient boroughs only; and that the elections for all thoſe were to be made by ſuch perſons only, as were poſſeſſed of lands or tenements, held by them as *freeholds* or *free burgage tenures*, which conſequently excluded all villeins and copyholders †, as alſo tenants in *ancient demeſne* (which were but the *king's villeins*) and the tenants and dependants of other *lords*, from being either the *electors*, or *elected* of the houſe of *commons* ‡. Indeed, the practice of encreaſing the number of the repreſentatives

By whom the elections were formerly made.

* Crompt of Courts, f. 2, 3, &c. Stat. 23 H. VI. c. 11.

† Stat. 12 R. II. c. 12. Crom. 2, 3, 4, 5. Bro. Ant. Dem. 431.

‡ Parl. 96. Reg. 261. Nat. Bre. 14.

of

of the commons, began very early, viz. *temp. Johan.* (if not before) for I find it a practice of that prince * to grant, uſually in conſideration of money, &c. charters to *ancient demeſne towns* (as generally all *ſea port towns* were) thereby erecting them into free boroughs †, and hence it was, as I conceive, that *Bridport*, *Dorcheſter*, *Harwich*, *Helſtone*, *Kingſton upon Hull*, and divers other ancient demeſne towns came to be erected into *free boroughs*, which originally had no right of being repreſented in parliament.

King John granted charters for money.

But whatever methods were then taken to increaſe the number of the houſe of commons, I find their number to be ‡ much the ſame from the end of Henry the Sixth's reign ‡, to the beginning of that of Henry the Eighth, viz. about three hundred.

‖ " That H. VIII. added to their number - - 38
King *Ed.* VI. - - 44
Queen *Mary*, - - 25
Queen *Elizabeth*, - 62
King James I. - - 27

The former and preſent numbers of repreſentatives.

* See Bohun's Col. per. tot.

† The Repreſentative of London and Weſtminſter, p. 14 to p. 21. Spelm. in voce *Major*.

‡ Forteſcue, p. 40.

‖ Mmſt. penes Auctorem.

"And king *Charles* I. about ten or twelve; ſo that at the time of the reſtoration of king *Charles* II. I find their numbers to have been about five hundred. But the commons about that time reſtrained this miſchievous practice for the future, ſo that they declared the elections made by virtue of that prince's charters void; and as *Cheſter* had been enabled to ſend two members for the county, and two for the city, by virtue of a * ſtat. 34, 35 H. VIII. ſo an act paſſed in the 25 *Car.* II. enabling *Durham* to ſend four members in like manner, and thus the number of the houſe of commons ſtood at five hundred and thirteen, till the union of the kingdoms of *England* and *Scotland*, when by virtue of the *union act* † forty-five *Scottiſh* members were added, which made the whole number of that houſe to be five hundred and fifty-eight, as it now ſtands."

King Charles's charters declared void.

Preſent number five hundred and fifty-eight.

Mr. De Lolme has collected a very juſt and impartial hiſtorical account of the origin, gradual increaſe, and eſtabliſhment of the influence and power of the houſe of commons ‡. "Edward I. continually engaged in

Origin and progreſs of the power of the commons under Edward I.

* St. 34, 35. H. VIII. c. xiii. St. 25. c. ii. c. ix.

† St. 5 An. c. viii.

‡ On the conſtitution of England, c. ii. p. 32. & ſeq.

wars,

wars, either againſt Scotland or on the continent, ſeeing moreover his demeſnes conſiderably diminiſhed, was frequently reduced to the moſt preſſing neceſſities. But though, in conſequence of the ſpirit of the times, he frequently indulged himſelf in particular acts of injuſtice, yet he perceived, that it was impoſſible to extend a general oppreſſion over a body of nobles and a people, who ſo well knew how to unite in a common cauſe. In order to raiſe ſubſidies therefore, he was obliged to employ a new method, and to endeavour to obtain, through the conſent of the people, what his predeceſſors had hitherto expected from their own power. The ſheriffs were ordered to invite the towns and boroughs of the different counties to ſend deputies to parliament; and it is from this æra, that we are to date the origin of the houſe of commons *.

The commons originally ſummoned only to ſupply the wants of the king.

" It muſt be confeſſed however, that theſe deputies of the people were not at firſt poſſeſſed of any conſiderable authority. They were far from enjoying thoſe extenſive privileges, which, in theſe days, conſtitute the houſe of commons a collateral part of the government; they were in thoſe times called

* A. D. 1295.

up only to provide for the wants of the king, and approve of the reſolutions taken by him and the aſſembly of the lords. But it was nevertheleſs a great point gained to have obtained the right of uttering their complaints, aſſembled in a body, and in a legal way to have acquired, inſtead of the dangerous reſource of inſurrections, a lawful and regular mean of influencing the motions of the government, and thenceforth to have become a part of it. Whatever diſadvantage might attend the ſtation at firſt allotted to the repreſentatives of the people, it was ſoon to be compenſated by the preponderance the people neceſſarily acquire, when they are enabled to act and move with method, and eſpecially with concert.

The advantage of legally influencing the motions of government.

" And indeed this privilege of naming repreſentatives inſignificant as it might then appear, preſently manifeſted itſelf by the moſt conſiderable effects. In ſpite of his reluctance, and after many evaſions unworthy of ſo great a king, Edward was obliged to confirm the great charter; he even confirmed it eleven times in the courſe of his reign. It was moreover enacted, that whatever ſhould be done contrary to it ſhould be null and void; that it ſhould be read twice a year in all cathedrals; and that the penalty of excommunication

Eleven confirmations of magna charta in Edward's reign, owing to the influence of the commons.

munication ſhould be denounced againſt any one, who ſhould preſume to violate it.

" At length he converted into an eſtabliſhed law a privilege, of which the Engliſh had hitherto had only a precarious enjoyment; and in the ſtatute de *tallagio non concedendo* he decreed, that no tax ſhould be laid, nor impoſt levied, without the joint conſent of the lords and commons; a moſt important ſtatute this, which, in conjunction with *Magna Charta*, forms the baſis of the Engliſh conſtitution. If from the latter the Engliſh are to date the origin of their liberty, from the former they are to date the eſtabliſhment of it; and as the great charter was the bulwark, that protected the freedom of individuals, ſo was the ſtatute in queſtion the engine, which protected the charter itſelf, and by the help of which the people were thenceforth to make legal conqueſts over the authority of the crown."

Statute de *tallagio non concedendo*, with magna charta, the baſis of the Engliſh conſtitution.

* " The repreſentatives of the nation, and of the whole nation, were now admitted into parliament; the great point therefore was gained, that was one day to procure them the great influence, which they at preſent poſſeſs; and the ſubſequent reigns afford continual inſtances of its ſucceſſive growth.

* De Lolme, c. iii. p. 41, & ſeq.

Under Edward II. the commons annex petitions to the bills, by which they granted ſubſidies.

Under Edward III. they claim a right of conſenting to every law,

and of impeaching miniſters of ſtate.

"Under Edward the Second, the commons began to annex petitions to the bills, by which they granted ſubſidies; this was the dawn of their legiſlative authority. Under Edward the Third, they declared they would not in future acknowledge any law, to which they had not expreſsly aſſented. Soon after this, they exerted a privilege, in which conſiſts at this time one of the great balances of the conſtitution; they impeached, and procured to be condemned ſome of the firſt miniſters of ſtate. Under Henry the Fourth, they refuſed to grant ſubſidies before an anſwer had been given to their petitions. In a word, every event of any conſequence was attended with an increaſe of the power of the commons; increaſes indeed but ſlow and gradual, but which were peaceably and legally effected, and were the more fit to engage the attention of the people, and coaleſce with the ancient principles of the conſtitution. Under Henry the Fifth, the nation was entirely taken up with its wars againſt France; and in the reign of Henry the Sixth began the fatal conteſts between the houſes of York and Lancaſter. The noiſe of arms alone was now to be heard; during the ſilence of the laws already in being, no thought was had of enacting new ones; and for thirty years together,

Under Hen. IV. they refuſed to grant ſubſidies till anſwers were given to their petitions.

The progreſs of their influence legal and ſure,

From Hen. V. the wars of the nation prevented any further progreſs of the influence of the commons.

ther, England preſents a wide ſcene of ſlaughter and deſolation.

"At length, under Henry the Seventh, who, by his intermarriage with the houſe of York, united the pretenſions of the two families, a general peace was re-eſtabliſhed, and the proſpect of happier days ſeemed to open on the nation. But the long and violent agitation, under which it had laboured, was to be followed by a long and painful recovery. Henry mounting the throne with ſword in hand, and in great meaſure as a conqueror, had promiſes to fulfil, as well as injuries to avenge. In the mean time the people wearied out by the calamities they had undergone, and longing only for repoſe abhorred even the idea of reſiſtance; ſo that the remains of an almoſt exterminated nobility beheld themſelves left defenceleſs, and abandoned to the mercy of the ſovereign.

Commons and lords ſubmiſſive to the firſt princes of the houſe of Tudor.

"The commons on the other hand accuſtomed to act only a ſecond part in public affairs, and finding themſelves bereft of thoſe, who had hitherto been their leaders, were more than ever afraid to form of themſelves an oppoſition. Placed immediately as well as the lords under the eye of the king, they beheld themſelves expoſed to the ſame dangers; like them therefore they purchaſed their

perſonal ſecurity at the expence of public liberty; and in reading the hiſtory of the two firſt kings of the houſe of Tudor, we imagine ourſelves reading the relation given by Tacitus, of Tiberius and the Roman ſenate.

"The time therefore ſeemed to be arrived, at which England muſt ſubmit in its turn to the fate of the other nations of Europe; all thoſe barriers, which it had raiſed for the defence of its liberty, ſeemed to have only been able to poſtpone the inevitable effects of power.

The nation kept in view the principles of liberty.

"But the remembrance of their ancient laws, of that great charter ſo often and ſo ſolemnly confirmed, was too deeply impreſſed on the minds of the Engliſh to be effaced by tranſitory evils. Like a deep and extenſive ocean, which preſerves an equability of temperature amidſt all the viciſſitudes of ſeaſons, England ſtill retained thoſe principles of liberty, which were ſo univerſally diffuſed through all orders of the people, and they required only a proper opportunity to manifeſt themſelves.

"England beſides ſtill continued to poſſeſs the immenſe advantage of being one undivided ſtate.

"Had it been like France divided into ſeveral diſtinct dominions, it would alſo have had

had ſeveral national aſſemblies. Theſe aſſemblies being convened at different times and places, for this and other reaſons never could have acted in concert; and the power of withholding ſubſidies, a power ſo important, when it is that of diſabling the ſovereign, and binding him down to inaction, would then have only been the deſtructive privilege of irritating a maſter, who would have eaſily found means to obtain ſupplies from other quarters.

Prudential reaſons for parliament ſubmitting to Hen. VIII.

" The different parliaments or aſſemblies of theſe ſeveral ſtates having thenceforth no means of recommending themſelves to their ſovereign, but their forwardneſs in complying with his demands, would have vied with each other in granting what it would not only have been fruitleſs, but even highly dangerous to refuſe. The king would not have failed ſoon to demand as a tribute a gift he muſt have been confident to obtain; and the outward form of conſent would have been left to the people only, as an additional means of oppreſſing them without danger.

" But the king of England continued, even in the time of the Tudors, to have but one aſſembly, before which he could lay his wants, and apply for relief. How great ſoever the increaſe of his power was, a ſingle parliament alone

alone could furniſh him with the means of exerciſing it; and whether it was, that the members of this parliament entertained a deep ſenſe of their advantages, or whether private intereſt exerted itſelf in aid of patriotiſm, they at all times vindicated the right of granting, or rather refuſing ſubſidies; and, amidſt the general wreck of every thing they ought to have held dear, they at leaſt clung obſtinately to the plank, which was deſtined to prove the inſtrument of their preſervation.

They never gave up the right of granting ſubſidies.

" Under Edward the Sixth the abſurd tyrannical laws againſt high treaſon inſtituted under Henry the Eighth his predeceſſor were aboliſhed. But this young and virtuous prince having ſoon paſſed away, the blood-thirſty Mary aſtoniſhed the world with cruelties, which nothing but the fanaticiſm of a part of her ſubjects could have enabled her to execute.

Henry VIII. laws of treaſon aboliſhed by Edward VI.

" Under the long and brilliant reign of Elizabeth England began to breath anew; and the proteſtant religion being ſeated once more on the throne brought with it ſome more freedom and toleration.

" The ſtar chamber, that effectual inſtrument of the tyranny of the two Henrys, yet continued to ſubſiſt; the inquiſitorial tribunal of

the high commiſſion was even inſtituted; and the yoke of arbitrary power lay ſtill heavy on the ſubject. But the general affection of the people for a queen, whoſe former misfortunes had created ſuch a general concern, the imminent dangers, which England eſcaped, and the extreme glory attending that reign leſſened the ſenſe of ſuch exertions of authority, as would in theſe days appear the height of tyranny, and ſerved at that time to juſtify, as they ſtill do excuſe a princeſs, whoſe great talents, though not her principles of government, render her worthy of being ranked among the greateſt ſovereigns.

Arbitrary though proſperous reign of Elizabeth.

" Under the reign of the Stuarts the nation began to recover from its long lethargy. James the Firſt, a prince rather imprudent than tyrannical drew back the veil, which had hitherto diſguiſed ſo many uſurpations, and made an oſtentatious diſplay of what his predeceſſors had been contented to enjoy.

James I, boaſts of the king's prerogatives.

" He was inceſſantly aſſerting, that the authority of kings was not to be controuled, any more than that of God himſelf. Like him they were omnipotent; and thoſe privileges, to which the people ſo clamorouſly laid claim, as their inheritance and birthright, were

were no more than an effect of the grace and toleration of his royal anceſtors*.

Publication of theſe high notions of royalty cauſed them to be canvaſſed.

" Thoſe principles hitherto only ſilently adopted in the cabinet, and in the courts of juſtice had maintained their ground in conſequence of this very obſcurity. Being now announced from the throne, and reſounded from the pulpit they ſpread an univerſal alarm. Commerce beſides with its attendant arts, and above all that of printing, diffuſed more ſalutary notions throughout all orders of the people; a new light began to riſe upon the nation; and the ſpirit of oppoſition frequently diſplayed itſelf in this reign, to which the Engliſh monarchs had not for a long time paſt been accuſtomed.

Storm gathered under James which burſt upon Charles I.

" But the ſtorm, which was only gathering in clouds during the reign of James, began to mutter under Charles the Firſt his ſucceſſor; and the ſcene, which opened to view on the acceſſion of that prince preſented the moſt formidable aſpect."

Improvements in the conſtitution under Charles I.

† " By the famous act, called the petition of right, and another poſterior act, to both which he aſſented, the compulſory loans and taxes diſguiſed under the name of *benevo-*

* See his declaration made in Parliament, in the years 1610 and 1621.

† De Lolme, p. 50. & ſeq.

lences were declared to be contrary to law; arbitrary impriſonments, and the exerciſe of the martial law were aboliſhed; the court of high commiſſion, and the ſtar-chamber were ſuppreſſed*; and the conſtitution freed from the apparatus of deſpotic powers, with which the Tudors had obſcured it, was reſtored to its ancient luſtre. Happy had been the people if their leaders, after having executed ſo noble a work, had contented themſelves with the glory of being the benefactors of their country. Happy had been the king, if obliged at laſt to ſubmit, his ſubmiſſion had been ſincere, and if he had become ſufficiently ſenſible, that the only reſource he had left was the affection of his ſubjects.

"But Charles knew not how to ſurvive the loſs of a power he had conceived to be indiſputable; he could not reconcile himſelf to limitations and reſtraints ſo injurious according to his notions to ſovereign authority. His diſcourſe and conduct betrayed his ſecret

* The ſtar-chamber differed from all the other courts of law in this; the latter were governed only by the common law, or immemorial cuſtom, and acts of parliament; whereas the former often admitted for law the proclamations of the king in council, and grounded its judgments upon them. The abolition of this tribunal therefore was juſtly looked upon as a great victory over regal authority.

deſigns;

Circumſtances which led to the fall of Charles I.

deſigns; diſtruſt took poſſeſſion of the nation; certain ambitious perſons availed themſelves of it to promote their own views; and the ſtorm, which ſeemed to have blown over burſt forth anew; the contending fanaticiſm of perſecuting ſects joined in the conflict between regal haughtineſs and the ambition of individuals; the tempeſt blew from every point of the compaſs; the conſtitution was rent aſunder, and Charles exhibited in his fall an awful example to the univerſe.

Vain efforts to eſtabliſh a democratical government in England.

"The regal power being thus annihilated, the Engliſh made fruitleſs attempts to ſubſtitute a republican government in its ſtead. '*It was a curious ſpectacle,*' ſays Monteſquieu, '*to behold the vain efforts of the Engliſh to eſtabliſh among themſelves a democracy.*' Subjected at firſt to the power of the principal leaders in the long parliament, they ſaw that power expire, only to paſs without bounds into the hands of a protector. They ſaw it afterwards parcelled out among the chiefs of different bodies of troops; and thus ſhifting without end from one kind of ſubjection to another, they were at length convinced, that an attempt to eſtabliſh liberty in a great nation, by making the people interfere in the common buſineſs of government,

ment, is of all attempts the moſt chimerical; that the authority *of all*, with which men are amuſed, is in reality no more than the authority of a few powerful individuals, who divide the republic among themſelves; and they at laſt reſted in the boſom of the only conſtitution, which is fit for a great ſtate and a free people; I mean that, in which a choſen number deliberate, and a ſingle hand executes; but in which, at the ſame time, the public ſatisfaction is rendered, by the general relation and arrangement of things, a neceſſary condition of the duration of government." I ſhall reſerve the conſideration of the uſurpation and protectorate for the laſt chapter, into which it will be more orderly introduced.

Reſtoration of Charles II.

* "Charles the Second therefore was called over; and he experienced on the part of the people that enthuſiaſm of affection, which uſually attends the return from a long alienation. He could not however bring himſelf to forgive them the inexpiable crime, of which he looked upon them to have been guilty. He ſaw with the deepeſt concern, that they ſtill entertained their former notions with regard to the nature of the royal prerogative, and bent upon the recovery

* De Lolme, ibidem, p. 54, & ſeq.

of

of the ancient powers of the crown, he only waited for an opportunity to break thoſe promiſes, which had procured his reſtoration.

" But the very eagerneſs of his meaſures fruſtrated their ſucceſs. His dangerous alliances on the continent, and the extravagant wars, in which he involved England, joined to the frequent abuſe he made of his authority, betrayed his deſigns. The eyes of the nation were ſoon opened, and ſaw into his projects; when convinced at length, that nothing but fixed irreſiſtible bounds can be an effectual check on the views and efforts of power, they reſolved finally to take away thoſe remnants of deſpotiſm, which ſtill made a part of the regal prerogative.

Neceſſity of limiting the prerogative.

" The military ſervices due to the crown, the remains of the ancient feudal tenures, had been already aboliſhed; the laws againſt heretics were now repealed; the ſtatute for holding parliaments once at leaſt in three years was enacted; the *Habeas Corpus* act, that barrier of the ſubject's perſonal ſafety, was eſtabliſhed; and ſuch was the patriotiſm of the parliaments, that it was under a king the moſt deſtitute of principle, that liberty received its moſt efficacious ſupports.

Liberty improved under Charles II.

" At length, on the death of Charles began a reign, which affords a moſt exemplary

leſſon

leſſon, both to kings and people; for when the throne was declared vacant, and a new line of ſucceſſion was eſtabliſhed, care was had to repair the breaches, that had been made in the conſtitution, as well as to prevent new ones; and advantage was taken of the rare opportunity of entering into an original and expreſs compact between king and people.

Advantage of an expreſs compact between king and people at the revolution.

" An oath was required of the new king more preciſe, than had been taken by his predeceſſors; and it was conſecrated as a perpetual *formula* of ſuch oaths. It was determined, that to impoſe taxes without the conſent of parliament, as well as to keep up a ſtanding army in time of peace are contrary to law. The power, which the crown had conſtantly claimed, of diſpenſing with the laws was aboliſhed. It was enacted, that the ſubject, of whatever rank or degree, had a right to preſent petitions to the king. Laſtly the key-ſtone was put to the arch by the final eſtabliſhment of the liberty of the preſs.

Liberties aſcertained or gained at the revolution.

" The revolution of 1689 is therefore the third grand æra in the hiſtory of the conſtitution of England. The great charter had marked out the limits, within which the royal authority ought to be confined; ſome outworks were raiſed in the reign of Edward

The revolution was the completion of our liberty.

the Firſt; but it was at the revolution, that the circumvallation was completed.

" It was at this æra, that the true principles of civil ſociety were fully eſtabliſhed. By the expulſion of a king, who had violated his oath, the doctrine of reſiſtance, that ultimate reſource of an oppreſſed people, was confirmed beyond a doubt. By the excluſion given to a family hereditarily deſpotic, it was finally determined, that nations are not the property of kings. The principles of paſſive obedience, the divine and indefeaſible right of kings, in a word, the whole ſcaffolding of falſe and ſuperſtitious notions, by which the royal authority had till then been ſupported, fell to the ground, and in the room of it were ſubſtituted the more ſolid and durable foundations of the love of order, and a ſenſe of the neceſſity of civil government among mankind."

Excluſive right of the commons in voting aids, &c.

Mr. Acherley ſays, * " That the houſe of commons, beſides their part in the legiſlature, ſhould be inveſted with and ſhould have, as *interwoven in their conſtitution*, theſe ſpecial powers, rights, and privileges, *(viz.)* the ſole right and power over the monies and treaſures of the people, and of giving and

* Britannic Conſtitution, ſec. xii. p. 45.

granting,

granting, or denying aids or monies for the public ſervice, and ſhould have the *firſt* commencement and conſideration, and the ſole modelling in their houſe *not only* of all laws for *impoſing taxes*, and levying and raiſing aids or money upon the people for the defence and ſupport of the *ſtate* and *government*; but alſo of all laws touching the taking from any man his property; and ſhould have power to enquire into, and judge of the uſes and occaſions, for which monies are to be demanded and given; and to appropriate the ſame to thoſe uſes, and to *inquire* into the applications, and to cenſure the miſapplications thereof; and that this right ſhould be ſo inviolable, *that neither of the other two eſtates* ſhould *propound* any thing, nor *interpoſe*, nor meddle in any of their debates or proceedings, touching theſe matters; and that theſe powers and *privileges* ſhould be, and be accounted *hereditary*, and as the moſt eminent pillars of this conſtitution; and that the commons in parliament aſſembled ſhould alſo have the terrible power of inquiring into grievances, and queſtioning and impeaching ſuch *malefactors*, as ſhould be found *ſubverting*, or *endeavouring* to ſubvert, or adviſing the ſubverſion or alteration of the *fundamental form* of this government."

Right of the commons to impeach ſtate delinquents.

Election of the commons muſt be free.

As the members of the houſe of commons are to be freely choſen to repreſent the free people of England in parliament, ſo the conſtitution will not permit the ſlighteſt deviation from the principle free-election, in any one of them. * "If any part of the repreſentative body be not choſen by the people, that part vitiates and corrupts the whole. If there be a defect in the repreſentation of the people, that power, which alone is equal to the making of laws in this country, is not complete, and the acts of parliament, under that circumſtance, are not the acts of a pure and entire legiſlature. I ſpeak of the theory of our conſtitution; and whatever difficulties or inconveniences may attend the practice, I am ready to maintain, that as far as the fact deviates from the principle, ſo far the practice is vicious and corrupt."

† "It is the ancient indiſputable privilege and right of the houſe of commons, that all grants of ſubſidies, or parliamentary aids do begin in their houſe, and are firſt beſtowed by them; although their grants are not effectual to all intents and purpoſes, until they have the aſſent of the other two branches of the legiſlature. The true reaſon ariſing

* Junius, Letter xxxix. p. 207.
† Black. Com. b. i. c. 2. p. 169.

from

from the ſpirit of our conſtitution ſeems to be this: the lords being a permanent hereditary body created at pleaſure by the king, ſuppoſed more liable to be influenced by the crown, and when once influenced to continue ſo, than the commons, who are a temporary elective body, freely nominated by the people, it would therefore be extremely dangerous to give the lords any power of framing new taxes for the ſubject; it is ſufficient, that they have a power of rejecting, if they think the commons too laviſh or improvident in their grants. But ſo reaſonably jealous are the commons of this valuable privilege, that herein they will not ſuffer the other houſe to exert any power, but that of rejecting; they will not permit the leaſt alteration or amendment to be made by the lords to the mode of taxing the people by a money bill; under which appellation are included all bills, by which money is directed to be raiſed upon the ſubject, for any purpoſe, or in any ſhape whatſoever, either for the exigences of government, and collected from the kingdom in general, as the land tax; or for private benefit, and collected in any particular diſtrict, as by turnpikes, pariſh rates, and the like.

Why money bills muſt originate in the houſe of commons.

Who will not permit them to be altered by the lords.

In the election of commoners, conſiſts the exerciſe of the democratic part of the conſtitution.

"In the elections of knights, citizens, and burgeſſes conſiſts the exerciſe of the democratical part of our conſtitution; for in a democracy there can be no exerciſe of ſovereignty but by ſuffrage, which is the declaration of the people's will: in all democracies therefore it is of the utmoſt importance to regulate by whom, and in what manner the ſuffrages are to be given. And the Athenians were ſo juſtly jealous of this prerogative, that a ſtranger, who interfered in the aſſemblies of the people, was puniſhed by their laws with death; becauſe ſuch a man was eſteemed guilty of high treaſon, by uſurping thoſe rights of ſovereignty, to which he had no title. In England, where the people do not debate in a collective body, but by repreſentation, the exerciſe of this ſovereignty conſiſts in the choice of repreſentatives. The laws have therefore very ſtrictly guarded againſt uſurpation or abuſe of this power, by many ſalutary proviſions, which may be reduced to theſe three points: 1. The qualifications of the electors; 2. The qualifications of the elected; 3. The proceedings at elections."

It may not be improper to preface the conſideration of theſe three points with ſome obſervations

obſervations upon the general complaint of the malcontents of the day, againſt the preſent repreſentation of the people in parliament, which they moſt loudly reprobate, as *partial*, *inadequate*, and *corrupt*.

The principle of our conſtitution undoubtedly is, that the repreſentation of the people ſhall be full, free, and unbiaſſed; and as far as the nature of circumſtances will allow, it has from time to time enforced and ſupported this principle by the wiſeſt rules, orders, and regulations. If at preſent they do not chuſe, or think it expedient and adviſeable, to make or introduce any changes or alterations into the parliamentary repreſentation of the people, it muſt be attributed to a very laudable and *conſtitutional* averſion from innovating upon the declaration and ſettlement of our rights at the revolution. Such an event is never more likely to happen in this country; it was a temporary diſſolution of the government, effected not by the act of the people or governed, but by that of the crown or governor, which therefore afforded an unprecedented opportunity to the people of recurring to their primeval rights of modelling and ſquaring that form of government, by which they choſe in fu-

Conſtitutional delicacy in altering the mode of electing repreſentatives.

The opportunity our anceſtors enjoyed of altering what ever they found defective in the repreſentation.

ture to be ruled and governed. The field was then open to redreſs every paſt grievance, and to introduce whatever innovation they thought requiſite or conducive to the full enjoyment of their rights and liberties. The minds of the generation then living were perhaps better formed for judging of the effects of civil liberty, than any preceding or ſubſequent generation whatever. The ſubverſion of monarchy by the death of king Charles I.; the experience of republicaniſm in the protectorate; the revival of monarchy in the reſtoration of king Charles II. under freſh conditions and limitations of the royal prerogative, after the nation had been gorged and ſurfeited with the tyrannical licentiouſneſs of democracy; the abandonment, dereliction, reſignation, abdication, or forfeiture of the regal truſt and executive power of government by king James II. were facts ſo recent, that their combined force would then, if ever, work their full impreſſion upon the minds of thoſe, who had experienced the whole variety of theſe changes. Thus the biſhop of Worceſter introduces ſerjeant Maynard, converſing with Mr. Somers and biſhop Burnet, immediately after the coronation of king William

Perſons living at the revolution eſpecially qualified to judge of civil liberty.

William and queen Mary, on the 11th of April 1689; * "Bear with me, ſaid he, my young friends. Age, you know, hath its privilege; and it may be, I uſe it ſomewhat unreaſonably. But I, who have ſeen the prize of liberty contending for through half a century, to find it obtained at laſt by a method ſo ſure, and yet ſo unexpected, do you think it poſſible, that I ſhould contain myſelf on ſuch an occaſion? Oh, if ye had lived with me in thoſe days, when ſuch mighty ſtruggles were made for public freedom, when ſo many wiſe counſels miſcarried, and ſo many generous enterprizes concluded but in the confirmation of lawleſs tyranny; if I ſay, ye had lived in thoſe days, and now at length were able to contraſt with me, to the tragedies that were then acted, this ſafe, this bloodleſs, this complete deliverance, I am miſtaken, if the youngeſt of you could reprove me for this joy, which makes me think I can never ſay enough on ſo delightful a ſubject."

Our anceſtors wiſely preſerved what they could of the ancient form of government.

The reſult of theſe impreſſions upon our anceſtors, who framed the bill of rights, and who new modelled the ſucceſſion and tenure of the crown, was to readopt as much of the old form of government, as was conſiſtent

* Hurd's Dial. Moral and Political, vol. ii. p. 94, 95.

ſiſtent with that perfection of liberty, which they then meant to eſtabliſh and tranſmit, as the moſt valuable inheritance to their poſterity for ever; moſt wiſely keeping in view that ſeaſonable and juſt adage of Tacitus, *Arcanum novi ſtatûs, imago antiqui:* "the ſecret of ſetting up a new government, is to retain the figure (or form) of the old one." Hence I think no one will deny, that a firm acquieſcence in that form of government eſtabliſhed at the revolution, and a ſtrong reluctance to break in upon it by any ſort of innovation are not only laudable, but even conſtitutional. We have nevertheleſs ſeen, as occaſions have required, very ſalutary and beneficial regulations made by parliament ſince that time, to check, moderate, and aſcertain the rights, privileges, and prerogatives of each ſeparate branch of the legiſlature. And we look up to parliament in full confidence, that they will, in the ſame ſpirit of patriotiſm, continue for ever to prune luxuriances, ſupply defects, and correct abuſes, as in the frailty of all human inſtitutions they may be found to ariſe.

Parliament has altered, and will alter what they think proper.

Though the public be in the habit of reſpecting and revering the innovations made in the conſtitution at the revolution, as ſacred and immutable, yet if degrees of deference

are admiſſible for different parts of our conſtitution, the deference for ſuch parts of it, as our anceſtors retained or revived, ought to be more operative upon their poſterity, than for the innovations, which they then thought proper to introduce; for though theſe latter may have been founded upon very plauſible and even ſolid grounds, they eſſentially wanted the ſanctioning judgment of experience; whereas the former ſuperadded the expreſs approbation and confirmation of the ſame judges, to the long tried experience of many centuries. Of both of theſe, the Reverend Mr. Paley ſpeaks truly, * "Theſe points are wont to be approached with a kind of awe; they are repreſented to the mind as principles of the conſtitution, ſettled by our anceſtors, and being ſettled, to be no more committed to innovation or debate; as foundations never to be ſtirred; as the terms and conditions of the ſocial compact, to which every citizen of the ſtate has engaged his fidelity, by virtue of a promiſe, which he cannot now recall. Such reaſons have no place in our ſyſtem; to us, if there be any good reaſon for treating theſe with

The old forms of our government more reſpectable than the new.

* Mr. Paley's Principles of Moral and Political Philoſophy, p. 426, as quoted by Dr. Prieſtley, in his Fourth Letter to Mr. Burke, p. 42.

more

Frequent changes of government to be avoided.

more deference and reſpect than other laws, it is either the advantage of the preſent conſtitution of government (which reaſon muſt be of different force in different countries) or, becauſe in all countries, it is of importance, that the form and uſage of governing be acknowledged and underſtood, as well by the governors as the governed, and becauſe the ſeldomer it is changed, the more it will be reſpected by both ſides."

The practice of every human inſtitution muſt eſſentially be leſs perfect, than the theory of it. And daily experience ſhews, how much more eaſy it is to invent objections, and ſtart difficulties, than to adminiſter relief, and cure evils. There can be but two general grounds, upon which the diſcontented declaimers of the day complain of the inadequate, partial, and corrupt repreſentation of this nation in parliament; either that we have ſwerved from the original uſages and inſtitutions of our anceſtors, or that the ſyſtem of repreſentation has never as yet been brought to that degree of perfection, to which their ſpeculative ideas have carried it. This latter ground of complaint will be ſoftened in proportion as the progreſſive improvements of our conſtitution ſhall be traced from the times and circumſtances,

The preſent ſyſtem of repreſentation comparatively complete.

ſtances, which created the expediency, or called forth the neceſſity of making them. If the preſent ſyſtem of repreſentation be compared with the practices and uſages in chuſing and returning members of parliament, from the firſt traces of a national convention, even down to the laſt century, it will appear to be a ſyſtem of the moſt complete liberty and reedom.

I have before ſhewn, that the perſons ſummoned to the ancient Saxon *wittenagemotes* partook rather more of the nature of our preſent peers, than of our preſent members of the houſe of commons. But in order to reconcile our minds more to the preſent ſyſtem, or ſtate of repreſentation in parliament, we ſhould coolly and impartially compare the cuſtoms, uſages, and forms of chuſing and returning the repreſentatives or delegates of the nation to parliament, in the days of our anceſtors, even with the moſt barefaced venality or ſyſtematic corruption of ſome modern boroughs; and we ſhall neceſſarily conclude, that the freedom, with which the nation now returns their delegates or truſtees to parliament, will bear no degree of compariſon with the ancient modes and uſages of electing the repreſentatives of the commons in parliament.

In

Different ſummons to the peers and to the commoners.

In the firſt place, the very commiſſion, or purpoſe of the delegation of the commoners, was formerly widely different from what it now is. * "When the commons were regularly called to parliament by Edw. I. the ſummons to them was only *ad audiendum, & faciendum, & conſentiendum*; whereas the ſummons to biſhops and barons was, *de arduis negotiis regni tractaturi & conſilium impenſuri.* The commons were not conſulted in ſtate affairs, about peace or war, or making of laws; their buſineſs being only to conſent to laws made by the kings and barons, and to conſent to aids and ſubſidies, and ſuch like, *ad habendum commune conſilium regni de auxiliis aſſidendis.* The firſt part of the writ to the commons is to conſent to ſuch ordinances as the peers ſhall make; the next part of the writ is to hear and do what the king ſhall further require of them; this is the ſubſtance of the ancient writs." So that †"the balance and meaſure of power in the government was in Edward the Firſt's time in the king, church, and nobility, to the propor-

* Gurdon, vol. i. p. 211. who quotes, Parl. Antiq. 24. 84. Parl. Sum. 7. 4 Inſtit. 10. Parl. Sum. Preface. Rel. Spelm. 64. Filmer, 127. 136. Journal, 18. James, 195.

† Gurdon, vol. ii. 278.

tion

tion, of above two thirds of the landed intereſt, and not one-third in the commons, down to Henry the Seventh's time. The ſtrength and power of the nation before lay in the ariſtocratical part." For even in the very ſame century it appears, that the commoners had no part nor ſhare in paſſing that law, which confirmed or acknowledged their own rights and liberties. For in the great charter of king John it is ſaid, * " *Imprimis conceſſiſſe Deo & hâc preſenti chartâ noſtrâ confirmaſſe pro nobis & heredibus in perpetuum, &c.* And, *iſta ſunt capitula, quæ barones petunt & dominus rex concedit, ſignata ſigillo Johannis regis.* From which it appears, that the commons, or democratical part of the nation, had no part nor ſhare in paſſing this famous charter. And in more ancient times, the lords of the great ſeignories were properly the only conſtituent members of the parliaments, or national conventions of thoſe days. † " The loweſt degree of members of the *Confeſſor*'s parliament were ſuch, as had knights dependent on them in their *friburgh*, *ſoke*, or *ſeignory*, and theſe great men repreſented themſelves, and alſo the

The commons had anciently no ſhare in paſſing laws.

* Wilkins, 356, 367. Brady's Appendix, 126. Tit. Hon. 702.

† Gurdon, vol. i. 210.

knights

knights and freemen of their ſeignories. The *theaw*, or under *thane*, that was a dependent upon the great *thane*, was not a member of the *Saxon* parliament, being repreſented there by his chief, his *thane*, as the *Norman* vavaſor or knight, that held of a great baron in mean tenure, was not a member of the *Norman* parliament, he being repreſented there by his great baron, of whom he held." The original right of repreſentation therefore aroſe out of the actual poſſeſſion of property, and not from any conſent, vote, or election of the individuals of the community.

The progreſſive conſequence of the commoners.

It is curious to obſerve and attend to the progreſſion of conſequence and importance, which the commoners acquired in the ſtate. * " In the ſeventeenth of king *John*, A. D. 1215, the barons obtained a confirmation of ancient liberties, and new privileges, and for the more firm eſtabliſhing them, it was conceded by the king, that the barons ſhould chooſe twenty-five of their own body to have power over all judges, juſtices, and miniſters, to ſee the great charters obſerved; but as yet no

* Gurdon, vol. i. 214, who quotes Rel. Spel. 63, 64. Brady, 617. Rot. Paten. 42 H. III. Somner's Dictionary, voce Unnan. Parlm. Sum. 3. Brady, 649. Parl. Sum. 7.

repreſentatives

repreſentatives of the generality of the commons in parliament.

" By king *John*'s charter the great barons were to have particular ſummons, and the reſt of the tenants *in capite* were to be ſummoned in general by the ſheriffs; ſo many ſmall tenancies being made by king *Stephen* and king *John*, that the tenants *in capite* made the parliament too tumultuous and numerous, wherefore the ſheriffs returned proxies for them, but not for the freeholders in general; for ſuch as held freely of the great barons were by them repreſented, they taking care of their tenants intereſt in parliament. The common people were repreſented in parliament by their chief lords, of whom they held.

Formerly the people repreſented by the lords.

" In the thirty-ſecond of *Henry* III. *anno Dom.* 1258, in the parliament of *Oxford* it was agreed, that twelve perſons ſhould be choſen to repreſent the commons in parliament; but thoſe elected were biſhops, great barons, and tenants *in capite*, as were the patrons of the *Roman plebeians* choſen out of the *patricians*. Theſe repreſentatives of the commons were choſen by virtue of the conſtitutions of *Oxford*, which both king and barons ſwore to obſerve; but theſe conſtitutions were ſoon dropt.

" This king in conſideration of ſubſidies

made frequent conceſſions to his barons and people, which were not very laſting in his unſettled reign.

" In the forty-third year of his reign, he ſent a charter to each county of *England*, publiſhing his reſolution to take the advice of his parliament, and in the charter expreſſes, who were to be the members thereof. The charter is writ in the *Norman Saxon* dialect and character, tranſlated into *Latin* by *Mr. Somner*; ſo much of it, as relates to my ſubject is in theſe words, viz. *vobis omnibus notum facimus, quod volumus & concedimus, ut quod conſiliarii noſtri omnes, ſive major pars eorum, qui fuerint electi à nobis & gentis plebe*, &c.

Who were choſen by the king, and who by the people.

" Thoſe members of parliament, that were included in the words, *electi è nobis*, were the great barons, that had particular letters of ſummons directed to each one of them; thoſe meant by *electi à gentis plebe*, were ſuch as were returned by the ſheriffs, which were the leſſer tenants *in capite*. In thoſe early days there was a great power in the ſheriffs the king's officers, in returning the king's tenants; they were to return all, but many got themſelves excuſed by agreement amongſt themſelves and the ſheriffs; thoſe, that went were the *electi à gentis plebe*.

Sheriffs powers in returning members to parliament.

" And

" And the ſheriffs were afterwards very partial in returning burgeſſes for boroughs, they returning burgeſſes for ſuch boroughs, as they pleaſed, and omitting others, till acts of parliament were made to direct and regulate their proceedings.

Their partiality in doing it.

Henry III. being under great difficulties with his barons and great men, in the forty-ninth year of his reign ſubmitted to have a parliament called in ſuch manner, as the barons directed; and *Simon Montford*, earl of *Leiceſter*, being the head of the confederate barons, that parliament was generally called *Montford*'s parliament.

" In this parliament of the forty-ninth of the king, he ſent writs to the biſhops, abbots, priors, earls, and great barons particularly, and to the ſheriffs of the ſeveral counties, to return two knights for each county, two citizens for each city, and two burgeſſes for each borough. And this was the firſt parliament of lords ſpiritual and temporal, knights, citizens, and burgeſſes, when the king was in the hands of *Montford*.

Montford's parliament the firſt regular convention of lords and commons.

" After the defeat of *Simon Montford* and the barons at the battle of *Eveſham*, the king's affairs took a turn to his advantage, and to the reſt of the parliaments of his reign he ſummoned none but lords ſpiritual and tem-

poral, and tenants *in capite*, wholly dropping knights, citizens, and burgeſſes; and ſo they were in Edward I.'s reign, till in his eighteenth year he ſummoned knights, citizens, and burgeſſes, and in his twenty-third year, and always afterwards."

From the 23d Ed. I. knights, citizens, and burgeſſes regularly ſummoned.

Diſcretionary power in the ſheriffs to make returns.

About the time of Hen. III. and ſubſequent reigns, the returns for boroughs were almoſt diſcretionary in the breaſts of the ſheriffs. In fact they ſeldom made returns for all the boroughs within their bailiwicks. * The writs did not particularly name the boroughs, that were to ſend burgeſſes, but were general, viz. *de qualibet civitate duos cives, & de quolibet burgo duos burgenſes, &c. eligi facias.* † "The form of the returns annexed to the ancient writs indicates ſomething of a diſcretionary power in the ſheriff, who after the names of the knights, citizens, and burgeſſes, concludes thus: *non ſunt plures civitates vel burgi in balivâ meâ*, though there were more boroughs there; and ſometimes the return concluded in theſe words, viz. *et non ſunt aliæ civitates ſeu burgi infra comitatum, de quibus aliqui cives, ſeu burgenſes, ad dictum parliamentum venire debent ſeu ſolent propter eorum debilitatem ſeu paupertatem.*"

* Brad. Burg. 52—55.

† Gurdon, vol. i. p. 235.

"The

* " The ſheriffs frequently left out of their returns ſmall inconſiderable boroughs, that were poor and not in condition to pay their burgeſſes their wages, or ſuch as had not reſients qualified for ſervice in parliament; and ſuch omiſſion was according to the favour boroughs could obtain from the ſheriffs.

" The great number of boroughs in Cornwall, and the adjacent weſtern counties is owing to the favour of the old earls of Cornwall and Devonſhire, men of great power and demeans, the earls of Cornwall being all of them related to the kings of England; and De Rivers, De Fortibus, and Courtney, earls of Devon, great and powerful men, who made many of their towns boroughs." Now if we reflect upon the overbearing and uncontroulable power of the great and opulent in thoſe days, it will be fair to conclude, that in proportion as the ariſtocratic influence was at that time more prevalent than at preſent, ſo were the electors of theſe boroughs more ſervilely devoted to the dictates of their lords. And formerly when burgeſſes were ſent to parliament, their duties were looked upon to be very different from the duties of

Boroughs multiplied by the lords to whom they belonged.

* Gurdon on Parliament, vol. i. p. 236.

our preſent members of the houſe of commons, whence it is evident beyond queſtion, that the nation and its intereſts are more compleatly repreſented and attended to at preſent, than they formerly were.

The commons were not formerly intereſted about ſtate affairs.

* "It was formerly counted to be a fundamental error in our parliamentary conſtitution, that the citizens and burgeſſes of the houſe of commons ſo much out-number the knights of ſhires, who repreſent the landed intereſt, which was ſo enlarged in *Henry* VII. and *Henry* VIII.'s time, as for the commons to overbalance in property both king, church, and lords. The greateſt part of the citizens and burgeſſes before *Henry* VII.'s time were eſteemed very good members of the commons, if they were ſo ſagacious, as to move ſomething in the houſe, that might tend to the advancement of the trade of the city or borough they repreſented, as the maritime boroughs, ſhipping, navigation, and foreign commerce; the *Suffolk* boroughs, the intereſt of the clothing trade; the citizens of *Norwich*, that of worſted *ſtuffs*; the *Corniſh* boroughs, that of the ſtannaries; and it was not looked upon as any part of their buſineſs in parliament to ſearch into the ARCANA *imperii*,

* Gurdon on Parliament, vol. ii. p. 354.

that

that being in all ancient times, and ſo late as *Henry* VII.'s time looked upon to be the province of the king and lords, for at that time citizens and burgeſſes were reſient of cities and boroughs, and not country gentlemen of great landed intereſt.

"In *Henry* VII.'s time and *Henry* VIII.'s, miniſters of ſtate, officers of the revenue, and other courtiers, found an account in creeping through boroughs into the houſe of commons, and to make room for them, the boroughs from one hundred and twenty-ſix (the number in the latter end of *Henry* VIII.'s time) is near doubled, by reviving dormant rights and privileges claimed by ancient boroughs after they had been obſolete for ſome centuries."

The members for many ancient boroughs were both choſen and returned by the lords, and ſometimes by the ladies of the manors or boroughs; which was certainly a groſſer deviation from the freedom of election, than any uſage or cuſtom, under which returns are at this day made for the moſt corrupt boroughs. * Thus in the 14th and 18th of queen Eliz. Dame Mary Packington, the

* Brady. Burg. App 5.

widow of Sir John Packington, made return of burgeſſes in theſe words, viz. "Know ye, that I Mary Packington, &c. have choſen, named, and appointed my truſty and well-beloved Thomas Lichfield and George Burden, eſqrs. to be my burgeſſes for my ſaid borough of Ayleſbury, &c."

It was anciently the practice for the crown to ſummon *pro re natâ*, the moſt flouriſhing towns to ſend repreſentatives to parliament; but this diſcretionary prerogative of the crown has been long ſince diſuſed. As ſome towns however formerly encreaſed in trade and grew populous, they were admitted to the right of ſending deputies or repreſentatives to parliament; thus the number of the houſe of commons encreaſed, as I have already ſpecified; but the deſerted boroughs continued the privilege or right of ſending members to parliament, though ſome of them finding it burthenſome to maintain their members, as was the uſage of thoſe days, by their own petition were eaſed of the expence, and at the ſame time loſt their right of ſending repreſentatives or members to parliament. For various reaſons the number of the houſe of commons has been encreaſed from three hundred, about which number it was ſuppoſed

Some boroughs loſt their privilege of ſending members to parliament.

poſed to be in Forteſcue's time *, to more than five hundred, excluſive of the members of Scotland. From the change in the policy, manners, and cuſtoms of the kingdom, the

* Fort. de Laud. Leg. Ang. c. xviii. p. 35. This great man ſays, "The ſtatutes of England are produced quite in another manner, not enacted by the ſole will of the prince, but with the concurrent conſent of the whole kingdom by their repreſentatives in parliament. So that it is morally impoſſible, but that they are and muſt be calculated for the good of the people, and they muſt needs be full of wiſdom and prudence, ſince they are the reſult not of one man's wiſdom only, or an hundred, but ſuch an aſſembly as the Roman ſenate was of old, more than three hundred ſelect perſons." Under correction, I beg leave to ſuggeſt, that Judge Blakiſton and moſt other writers upon the rights of the commons, as Prynne, Petit, Selden, &c. have miſtaken and miſrepreſented this paſſage of Forteſcue; the error may have proceeded from attending to the Engliſh verſion of this reſpectable author, which I have copied above. The bare ſtatement of the original words, *dum nedum principis voluntate, ſed & totius regni aſſenſu ipſa conduntur*, will, I think, ſufficiently prove, that in mentioning the number three hundred, he included the lords *ſpiritual* and *temporal*, as well as the commons, without whoſe conſent no act of parliament could then paſs, any more than at preſent. His aſſimilation of them alſo to the Roman ſenators, who were not the choſen delegates or repreſentatives of the people, ſtrengthens my ſuggeſtion; and the aſſertion of Mr. Gurdon, that learned inveſtigator of the old parliamentary inſtitutions, that the number of the houſe of commons was but one hundred and twenty-ſix at the latter end of Hen. VIII.'s reign, ſeems to place the matter out of all doubt.

right

right or duty of ſending repreſentatives to parliament is no longer felt as a grievance or hardſhip, but valued as an ineſtimable right, liberty, and benefit; and the appraiſement of its value is now ſettled by the paucity of the voters, in whom the right of election for the borough is veſted. Hence aroſe the idea of property in boroughs; for where the right of election remained by the decay or decreaſe of population in the borough veſted in few individuals, it often happened, that theſe few voters were tenants or dependents of ſome wealthy or powerful man of property in the neighbourhood. The influence and power of the opulent over their tenants and dependents, or, as they formerly often were their vaſſals, feudatories, or bondſmen, were in ancient times very different from what they now are. At preſent I do not conceive a poſſible caſe, in which, if the right of voting for a borough were veſted but in one ſingle individual, how that individual ſhould be conſtrained or obliged to give his vote for one perſon in preference to another. In proportion to the certainty, with which a ſmall number of electors could return the member they choſe, was this ideal borough-right ſuppoſed to be veſted either in the electing individuals of the borough, or in thoſe, who had

Whence the idea of property in boroughs

had an intereſt in or influence over the electors.

In proceſs of time, this certainty of returning their own man came to be looked upon as a ſpecies of property, and as that idea gained ground, ſo did the legiſlature become tender of invading it, upon the true conſtitutional principle of holding and preſerving all private property ſacred and inviolable. There could not in reality be a groſſer violation of the freedom of election, than to prevent the electors from chuſing thoſe, whom benevolence, affection, and gratitude ſhould ſuggeſt or point out as the moſt agreeable perſons to repreſent them in parliament. Upon the preſumptive force of ſuch motives are individuals very frequently, though very improperly, ſaid to command the votes of a borough; for no phyſical nor moral, much leſs any *legal* or *conſtitutional* reſtraint or obligation of voting for a particular perſon, can by poſſibility exiſt; and our acts of parliament have gone almoſt to the utmoſt extent of human juriſdiction, in order to obviate and prevent the effects of any undue influence, bribery, and corruption upon the electors.

Perſons improperly ſaid to command the votes of a borough.

It is truly wonderful to conſider the delicate, and at the ſame time effectual remedy, which our admirable conſtitution applies to this

this real or apparent evil. As the nation grew more populous, more opulent, and conſequently as individuals grew more intriguing and ambitious, the effects of popular elections became more hurtful to the ſobriety, peace, and induſtry of the community; the multiplication of ſuch elections was an evident extenſion of the evil already felt and complained of; now if it be conſidered, that the number of repreſentatives in parliament has been more than doubled ſince Sir John Forteſcue reſted our ſecurity for none but good laws being enacted upon the number of the members of parliament, who *conſented to them on behalf* of the community, and that the population *of the kingdom is certainly not proportionably increaſed* ſince that time, it will be reaſonable to infer, that as, including peers, there are about eight hundred members of parliament *quorum aſſenſu* the ſtatutes are now formed, there can be no deviation from the ancient conſtitutional intention and ſpirit of parliaments, unleſs the increaſe of the numerical proportion of the repreſentatives to the repreſented ſhall be thought a violation or abuſe of the conſtitution. In order therefore to do away every idea of unequal repreſentation between two boroughs very unequal in population and opulence,

The conſtitutional remedy againſt the inadequacy of repreſentation.

lence, from the moment of the return of their reſpective members one becomes as much as the other a repreſentative for the whole people or community of Great Britain. * " Every member, though choſen by one particular diſtrict, when elected and returned ſerves for the whole realm; for the end of his coming thither is not particular, but general; not barely to advantage his conſtituents, but the *commonwealth*; to adviſe his majeſty (as appears from the writ of ſummons) *de communi conſilio ſuper negotiis quibuſdam arduis et urgentibus, regem, ſtatum, et defenſionem regni Angliæ et eccleſiæ Anglicanæ concernentibus*; and therefore he is not bound, like a deputy in the United Provinces, to conſult with or take the advice of his conſtituents upon any particular point, unleſs he himſelf thinks it proper or prudent ſo to do." Upon this principle therefore it muſt be allowed, that eight millions of individuals (ſuppoſing this to be the population of England) are more fully repreſented by eight hundred † than

The duties of the repreſentatives when once returned.

* Blak. Com. b. i. c. 2.

† Some people doubt whether the actual population of the kingdom be at all increaſed ſince that time; it certainly is not increaſed in the proportion of eight to three.

by

by three hundred repreſentatives, or perſons conſenting to the acts of the legiſlature.

It is certain, that the practice of every human inſtitution muſt in ſome degree fall ſhort of the perfection of its theory; bribery and corruption are old hacknied themes of popular declamation, and it will ever increaſe and be louder in proportion to the diſappointment, envy, and malice of the diſcontented party. Leſs vociferous and leſs frequent would be the complaints againſt bribery, if the complainants did but recollect, that the root of the evil lay leſs in the offer, than in the acceptance of the bribe. It argues more corruption and depravity in a diſtrict, to find a hundred men ready to ſacrifice their freedom and integrity for a trifling bribe, than to find one man impelled by his ambition to offer it. No puniſhment can be too ſevere upon thoſe, who hold out the bait to the multitude; but until the corrupt diſpoſition of electors be rectified, they will take care to render ineffectual the moſt vigilant and rigorous laws againſt the bribing offers of the *elected*. Ill therefore does it become thoſe to complain of encroachments upon the conſtitutional freedom of elections, whoſe voluntary and reflexed corruption completes the guilt

The ſource and effects of bribery.

guilt of the act, by which the conſtitution is ſo ſeverely wounded. I wiſh not to extenuate the guilt of bribery, nor ſhall I endeavour to juſtify any deſign or attempt to deprive a voter of the freedom of his choice; but as the evil is abſolutely effected by the elector, who under every circumſtance of influence, fear, hope, or temptation, actually retains the freedom of his action, and therefore of his election, I muſt neceſſarily conclude, that the only effectual prevention of the evil will be the correction of the corrupt diſpoſition of the electors; without this, every attempt or exertion of the magiſtrate will be futile and ineffectual.

Qualifications of electors.

It is not my intention to enter into the minute and particular qualifications of each elector for a repreſentative in parliament; ſuffice it to ſay, that the conſtitution ſuppoſes him to be ſo independent in life, as not to be under the bias, controul, or influence of any one; therefore every elector for the knight of the ſhire muſt have *bonâ fide* freehold lands in the ſhire at leaſt of the annual value of 40*s.* which at the time of Hen. VI. when this qualification was firſt required, was equivalent to 20*l.* in the preſent reduced value of money. By not accommodating this qualification to the preſent value of money, the conſtitution very much enlarges the rights of electors beyond

the original intention. Almoſt every city and borough has its peculiar qualification for voting. Every voter muſt be of full age, a natural-born ſubject, and *rectus in curia.*

Qualifications of the elected.

Theſe three laſt qualifications are alſo required in every perſon to be elected. No clergyman, judge, nor ſheriff can be elected; nor indeed, generally ſpeaking, can any perſon be elected, who holds a place or penſion under the crown, by which the freedom of his conduct may be ſuppoſed to be biaſſed. And if any member of parliament accepts an office under the crown, he thereby vacates his ſeat, and muſt return to his conſtituents, if he wiſh to be re-elected, that they may have the liberty of rejecting him, if they think, that the acceptance of ſuch office will affect the freedom of his parliamentary conduct. A knight of the ſhire muſt have a qualification of 600 *l.* per ann. *bona fide* freehold landed property; and every citizen and burgeſs at leaſt 300 *l.* per ann. of like *bona fide* freehold landed property.

Means of preſerving the freedom of the electors.

The great and conſtant attention, which the conſtitution ſhews to the freedom of elections appears through every ſtage of the proceſs. After iſſuing the writs for chuſing the members, every precaution is taken, that human foreſight can ſuggeſt, to remove even

the poſſibility of any undue influence over the freedom of the electors; all ſoldiers are removed from the place of election; the interference of peers and certain officers of the crown is moſt ſtrictly prohibited; the offer or promiſe of any money, entertainment, profit, promotion, or advantage, in order to the election induces the inability to be elected; and paſſive and active bribery is puniſhed with the heavieſt forfeitures and diſabilities.

* "Undue influence being thus (I wiſh the depravity of mankind would permit me to ſay effectually) guarded againſt, the election is to be proceeded to on the day appointed; the ſheriff or other returning officer firſt taking an oath againſt bribery, and for the due execution of his office. The candidates likewiſe, if required, muſt ſwear to their qualification, and the electors in counties to theirs; and the electors both in counties and boroughs are alſo compellable to take the oath of abjuration and that againſt bribery and corruption. And it might not be amiſs if the members elected were bound to take the latter oath, as well as the former; which in all probability would be much more effectual, than adminiſtering it only to the electors."—

* Blak. Com. b. i. c. 2.

I will cloſe this ſubject with the words of an author, who has taken much pains to collect the rights and duties of the houſe of commons.

Conſtitutional freedom of the houſe of commons.

* " There is nothing ought to be ſo dear to the commons of *Great Britain* as a free parliament; that is, a *houſe of commons* every way free and independent either of the lords or miniſtry, &c. *free* in their perſons; *free* in their eſtates; *free* in their elections; *free* in their returns; *free* in their aſſembling; *free* in their ſpeeches, debates, and determinations; *free* to complain of offenders; *free* in their proſecutions for offences; and therein *free* from the fear or influence of others, how great ſoever; *free* to guard againſt the incroachments of arbitrary power; *free* to preſerve the liberties and properties of the ſubject; and yet *free* to part with a ſhare of thoſe properties, when neceſſary, for the ſervice of the public; nor can he be juſtly eſteemed a repreſentative of the people of *Britain*, who does not ſincerely endeavour to defend their juſt rights and liberties againſt all invaſions whatſoever."

* Appendix to Lex Parliamentaria, p. 433.

CHAP.

CHAP. XV.

OF THE COLLECTIVE LEGISLATIVE BODY.

I Shall now preſent my readers with a general outline of the nature, laws, and cuſtoms of parliament, united together in one aggregate body.

Power and juriſdiction of parliament.

* "The power and juriſdiction of parliament," ſays Sir Edward Coke, "is ſo tranſcendent and abſolute, that it cannot be confined, either for cauſes or perſons, within any bounds. And of this high court he adds, it may be truly ſaid, '*Si antiquitatem ſpectes, eſt vetuſtiſſima; ſi dignitatem, eſt honoratiſſima; ſi juriſdictionem, eſt capaciſſima.*' It hath ſovereign and uncontroulable authority in making, confirming, enlarging, reſtraining, abrogating, repealing, reviving, and expounding of laws, concerning matters of all poſſible denominations, † eccleſiaſtical, or temporal, civil, military, maritime, or criminal; this being the place, where that abſolute deſpotic power, which muſt in all governments reſide

* Blak. Com. b. i. c. 2. c. 160.

† *i. e.* concerning the civil Eſtabliſhment of Religion, not upon the doctrine or points of revelation.

ſomewhere, is entruſted by the conſtitution of theſe kingdoms. All miſchiefs and grievances, operations and remedies, that tranſcend the ordinary courſe of the laws, are within the reach of this extraordinary tribunal. It can regulate or new model the ſucceſſion to the crown; as was done in the reign of Henry VIII. and William III. It can alter the eſtabliſhed religion of the land; * as was done in a variety of inſtances, in the reigns of king Henry VIII. and his three children. It can change and create afreſh even the conſtitution of the kingdom, and of parliaments themſelves; as was done by the act of union, and the ſeveral ſtatutes for triennial and ſeptennial elections. It can in ſhort do every thing, that is not naturally impoſſible; and therefore ſome have not ſcrupled to call its power by a figure rather too bold, the omnipotence of parliament. True it is, that what the parliament doth, no authority upon earth can undo. So that it is a matter moſt eſſential to the liberties of this kingdom, that ſuch members be delegated to this important truſt, as are moſt eminent for their probity, their fortitude, and their knowledge.

Omnipotence of parliament.

* *i. e.* the civil Eſtabliſhment of it.

In

In order to prevent the miſchiefs, that might ariſe by placing this extenſive authority in hands, that are either incapable, or elſe improper to manage it, it is provided by the cuſtom and law of parliament, that no one ſhall ſit or vote in either houſe, unleſs he be twenty-one years of age. This is alſo expreſsly declared by ſtatute 7 & 8 W. III. c. 25, with regard to the houſe of commons; doubts having ariſen from ſome contradictory adjudications, whether or no a minor was incapacitated from ſitting in that houſe. It is alſo enacted by ſtatute 7 Jac. I. c. 6. that no member be permitted to enter the houſe of commons, till he hath taken the oath of allegiance before the lord ſteward, or his deputy; and by 30 Car. II. ſt. 2. and 1 Geo. I. c. 13, that no member ſhall vote or ſit in either houſe, till he hath, in the preſence of the houſe, taken the oaths of allegiance, ſupremacy, and abjuration, and ſubſcribed, and repeated the declaration againſt tranſubſtantiation, and invocation of ſaints, and the ſacrifice of the maſs. Aliens, unleſs naturalized, were likewiſe by the law of parliament incapable to ſerve therein; and now it is enacted, by ſtatute 12 & 13 W. III. c. 2. that no alien, even though he be naturalized, ſhall be capable of being a member of either houſe of parliament. And there are not only

No minors to ſit in either houſe.

Oaths required to qualify the members to take their ſeats.

Excluſion of aliens.

theſe ſtanding incapacities; but if any perſon is made a peer by the king, or elected to ſerve in the houſe of commons by the people, yet may the reſpective houſes, upon complaint of any crime in ſuch perſon, and proof thereof, adjudge him diſabled and incapable to ſit as a member; and this by the law and cuſtom of parliament.

Criminals adjudged by the two houſes incapable to ſit.

Lex & conſuetudo parliamenti.

The high court of parliament hath its own peculiar law, called the *lex et conſuetudo parliamenti*; a law, which Sir Edward Coke obſerves, is "*ab omnibus quærenda, a multis ignorata, a paucis cognita.*" It will not, therefore, be expected that we ſhould enter into the examination of this law, with any degree of minuteneſs; ſince, as the ſame learned author aſſures us, it is much better to be learned out of the rolls of parliament, and other records, and by precedents, and continual experience, than can be expreſſed by any one man. It will be ſufficient to obſerve, that the whole of the law and cuſtom of parliament has its original from this one maxim; "That whatever matter ariſes concerning either houſe of parliament, ought to be examined, diſcuſſed, and adjudged in that houſe, to which it relates, and not elſewhere." Hence for inſtance, the lords will not ſuffer the commons to interfere in ſettling

Each houſe judge of their own cauſes.

the

the election of a peer of Scotland; the commons will not allow the lords to judge of the election of a burgeſs; nor will either houſe permit the ſubordinate courts of law to examine the merits of either caſe. But the maxims upon which they proceed, together with the method of proceeding, reſt entirely in the breaſt of the parliament itſelf; and are not defined and aſcertained by any particular ſtated laws.

No limited form nor proofs in parliament.

The *privileges* of parliament are likewiſe very large and indefinite. And therefore when in 31 Henry VI, the houſe of lords propounded a queſtion to the judges concerning them, the chief juſtice Sir John Forteſcue, in the name of his brethren declared, "that they ought not to make anſwer to that queſtion; for it hath not been uſed aforetime, that the juſtices ſhould in anywiſe determine the privileges of the high court of parliament. For it is ſo high and mighty in its nature, that it may make law; and that, which is law, it may make no law; and the determination and knowledge of that privilege belongs to the lords of parliament, and not to the juſtices." Privilege of parliament was principally eſtabliſhed, in order to protect its members, not only from being moleſted by their fellow-ſubjects, but alſo

Privileges of parliament indefinite.

Reaſons for their being indefinite.

more eſpecially from being oppreſſed by the power of the crown. If, therefore, all the privileges of parliament were once to be ſet down and aſcertained, and no privilege to be allowed, but what was ſo defined and determined, it were eaſy for the executive power to deviſe ſome new caſe, not within the line of privilege, and under pretence thereof to haraſs any refractory member, and violate the freedom of parliament. The dignity and independence of the two houſes are therefore in great meaſure preſerved by keeping their privileges indefinite. Some however of the more notorious privileges of the members of either houſe are privilege of ſpeech, of perſon, of their domeſtics, and of their lands and goods. As to the firſt, privilege of ſpeech, it is declared by the ſtatute 1 W. and M. ſt. 2. c. 2. as one of the liberties of the people, "that the freedom of ſpeech, and debates, and proceedings in parliament, ought not to be impeached or queſtioned in any court or place out of parliament." And this freedom of ſpeech is particularly demanded of the king in perſon, by the ſpeaker of the houſe of commons, at the opening of every new parliament. So likewiſe are the other privileges of perſon, ſervants, lands, and goods; which are immunities as ancient, as Edward the

Privilege of ſpeech.

the confeſſor; in whoſe laws we find this precept, '*Ad ſynodos venientibus ſive ſummoniti ſint, ſive per ſe quid agendum habuerint, ſit ſumma pax:*' and ſo too, in the old Gothic conſtitutions, '*extenditur hæc pax et ſecuritas ad quatuordecim dies, convocato regni ſenatu.*' This includes not only privilege from illegal violence, but alſo from legal arreſts, and ſeiſures by proceſs from the courts of law. To aſſault by violence a member of either houſe, or his menial ſervants, is a high contempt of parliament, and there puniſhed with the utmoſt ſeverity. It has likewiſe peculiar penalties annexed to it in the courts of law, by the ſtatutes 5 Henry IV. c. 6. and 11 Henry VI. c. 11. Neither can any member of either houſe be arreſted and taken into cuſtody, nor ſerved with any proceſs of the courts of law; nor can his menial ſervants be arreſted; nor can any entry be made on his lands; nor can his goods be diſtreined or ſeiſed; without a breach of the privilege of parliament.

Privilege of perſons.

Privilege of ſervants, lands, and goods.

" Theſe privileges however, which derogate from the common law, being only indulged to prevent the member's being diverted from the public buſineſs endure no longer, than the ſeſſion of parliament, ſave only as to the freedom of his perſon: which in a peer is for ever ſacred and inviolable; and

and in a commoner for forty days after every prorogation, and forty days before the next appointed meeting; which is now in effect as long, as the parliament ſubſiſts, it ſeldom being prorogued for more, than fourſcore days at a time. As to all other privileges, which obſtruct the ordinary courſe of juſtice, they ceaſe by the ſtatutes, 12 W. III. c. 3. and 11 Geo. II. c. 24. immediately after the diſſolution or prorogation of the parliament, or adjournment of the houſes for above a fortnight; and during theſe receſſes a peer, or member of the houſe of commons may be ſued like an ordinary ſubject, and in conſequence of ſuch ſuits may be diſpoſſeſſed of his lands and goods. In theſe caſes the king has alſo his prerogative: he may ſue for his debts, though not arreſt the perſon of a member, during the ſitting of parliament; and by ſtatute 2 & 3 Ann. c. 18. a member may be ſued during the ſitting of parliament for any miſdemeanor, or breach of truſt in a public office. Likewiſe for the benefit of commerce, it is provided by ſtatute 4 Geo. III. c. 33. that any trader, having privilege of parliament, may be ſerved with legal proceſs for any juſt debt, to the amount of £. 100, and unleſs he make ſatisfaction within two months, it ſhall be deemed an act of bankruptcy;

By ſtatutes ſome privileges ceaſe after diſſolution and prorogation.

Other abridgments of the privileges of parliament.

ruptcy; and that commiſſions of bankrupt may be iſſued againſt ſuch privileged traders in like manner, as againſt any other.

" The only way, by which courts of juſtice could antiently take cognizance of privilege of parliament was by writ of privilege, in the nature of a *ſuperſedeas*, to deliver the party out of cuſtody, when arreſted in a civil ſuit. For when a letter was written by the ſpeaker to the judges, to ſtay proceedings againſt a privileged perſon, they rejected it, as contrary to their oath of office. But ſince the ſtatute 12 W. III. c. 3. which enacts, that no privileged perſon ſhall be ſubject to arreſt or impriſonment, it hath been held, that ſuch arreſt is irregular *ab initio*, and that the party may be diſcharged upon motion. It is to be obſerved, that there is no precedent of any ſuch writ of privilege, but only in civil ſuits; and that the ſtatute of 1 Jac. I. c. 13. and that of king William, (which remedy ſome inconveniences ariſing from privilege of parliament) ſpeak only of civil actions. And therefore the claim of privilege hath been uſually guarded with an exception, as to the caſe of indictable crimes; or, as it hath been frequently expreſſed, of treaſon, felony, and breach (or ſurety) of the peace. Whereby it ſeems to be underſtood, that no privilege

How proceſs to be had againſt members of parliament in civil caſes.

How in criminal caſes.

privilege was allowable to the members, their families, or ſervants in any *crime* whatſoever; for all crimes are treated by the law as being *contra pacem domini regis*. And inſtances have not been wanting, wherein privileged perſons have been convicted of miſdemeanors, and committed, or proſecuted to outlawry, even in the middle of a ſeſſion; which proceeding has afterwards received the ſanction and approbation of parliament. To which may be added, that a few years ago, the caſe of writing and publiſhing ſeditious libels was reſolved by both houſes not to be intitled to privilege; and that the reaſons, upon which that caſe proceeded, extended equally to every indictable offence. So that the chief, if not the only, privilege of parliament in ſuch caſes, ſeems to be the right of receiving immediate information of the impriſonment or detention of any member with the reaſon, for which he is detained; a practice, that is daily uſed upon the ſlighteſt military accuſations, preparatory to a trial by a court martial; and which is recognized by the ſeveral temporary ſtatutes for ſuſpending the *habeas corpus* act, whereby it is provided, that no member of either houſe ſhall be detained, till the matter, of which he ſtands ſuſpected, be firſt communicated to the houſe, of which he is a member,

Seditious libellers not now privileged.

Communication to be made to the houſe of the detention of its member.

member, and the conſent of the ſaid houſe obtained for his commitment or detaining. But yet the uſage has uniformly been ever ſince the revolution, that the communication has been ſubſequent to the arreſt."

When an act of parliament is once completed, it is * "the exerciſe of the higheſt authority, that this kingdom acknowledges upon earth. It hath power to bind every ſubject in the land, and the dominions thereunto belonging †; nay, even the king himſelf, if particularly named therein. And it cannot be altered, amended, diſpenſed with, ſuſpended, or repealed, but in the ſame forms, and by the ſame authority of parliament: for it is a maxim in law, that it requires the ſame ſtrength to diſſolve, as to create an obligation." Sovereignty of parliament.

Every natural born ſubject, as a member of this community, has a perſonal intereſt in the enjoyment and preſervation of the before mentioned rights, liberties, and prerogatives, by his repreſentatives in parliament; for the maintenance and preſervation of them will alone maintain and preſerve ſacred and in- Our intereſt to preſerve the rights and privileges of parliament.

* Blak. ubi ſupra, p. 185.

† Since this was written by Judge Blakiſtone, by the 23 Geo. III. c. 28. a ſeparate and independent legiſlature has been allowed to the kingdom of Ireland.

violate, the rights and liberties of all Britons, which are common both to the repreſentatives and repreſented.

I have already endeavoured to ſhew the general rights, which every man is entitled to, by becoming a member of civil ſociety; thoſe, to which he is entitled as a member of this community, may be called, * "in a peculiar and emphatical manner, the rights of the people of England. And theſe may be reduced to three principal or primary articles; the right of perſonal ſecurity, the right of perſonal liberty, and the right of private property; becauſe as there is no other known method of compulſion, or of abridging man's natural free will, but by an infringement or diminution of one or other of theſe important rights, the preſervation of theſe inviolate may juſtly be ſaid to include the preſervation of our civil immunities, in their largeſt and moſt extenſive ſenſe.

General rights of the people of England.

"I. The right of perſonal ſecurity, conſiſts in a perſon's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation.

The right of perſonal ſecurity.

"† II. Next to perſonal property, the law of England regards, aſſerts, and preſerves

Of perſonal liberty.

* Blak. Com. b. i. c. i. p. 129.

† Blak. ibidem.

the

the perſonal liberty of individuals. This perſonal liberty conſiſts in the power of locomotion, of changing ſituation, or removing one's perſon to whatſoever place one's own inclination may direct, without impriſonment or reſtraint, unleſs by due courſe of law."

Of perſonal property.

* " III. The third abſolute right inherent in every Engliſhman, is that of property; which conſiſts in the free uſe, enjoyment, and diſpoſal of all his acquiſitions, without any control or diminution."

It would exceed my purpoſe to enumerate in detail all the particular laws, by which theſe rights and liberties are preſerved and protected. Some are by common law, others by ſtatute law: every ſubject may know, if he pleaſe, in what they conſiſt; for they depend not upon the arbitrary will of a judge, but are permanent, fixed, and unchangeable, unleſs by act of parliament. The conſtitution, powers, and privileges of parliament, and the limitation of the king's prerogative to certain bounds are the general and fundamental grounds for protecting and maintaining inviolate, our three great and primary rights of perſonal ſecurity, perſonal liberty,

Certainty of our rights.

* Blak. Com. b. i. c. i. p. 129.

and

and private property. Our immediate and ſpecific ſecurity for their preſervation, is the free and uninterrupted application to courts of juſtice, unqueſtionably the moſt immaculate, that have ever exiſted in any known country; and to juries of our peers, whoſe rights now ſeem for ever to be unalterably ſettled upon the true genuine principles of the Engliſh conſtitution *.

Our courts of juſtice immaculate.

Rights of juries.

Preſervation of our rights and liberties.

† "In theſe ſeveral articles conſiſt the rights, or, as they are frequently termed, the liberties of Engliſhmen; liberties more generally talked of, than thoroughly underſtood, and yet highly neceſſary to be perfectly known and conſidered by every man of rank or property, leſt his ignorance of the points, whereon they are founded, ſhall hurry him into faction and licentiouſneſs on the one hand, or a puſillanimous indifference and criminal ſubmiſſion on the other. And we have ſeen, that theſe rights conſiſt primarily in the free enjoyment of perſonal ſecurity, of perſonal liberty, and of private property. So long as theſe remain inviolate, the ſubject is perfectly free; for every ſpecies of compul-

* Vid. Mr. Erſkine's excellent argument upon the Rights of Juries, in the caſe of the Dean of St. Aſaph, in B. R. throughout.

† Blak. Com. b. i. c. 1. ſub. fin.

ſive

ſive tyranny and oppreſſion muſt act in oppoſition to one or other of theſe rights, having no other object, upon which it can poſſibly be employed. To preſerve theſe from violation it is neceſſary, that the conſtitution of parliaments be ſupported in its full vigour, and limits certainly known be ſet to the royal prerogative. And laſtly, to vindicate theſe rights, when actually violated or attacked, the ſubjects of England are entitled in the firſt place to the regular adminiſtration and free courſe of juſtice in the courts of law; next to the right of petitioning the king and parliament for redreſs of grievances; and laſtly to the right of having and uſing arms for ſelf-preſervation and defence. And all theſe rights and liberties it is our birthright to enjoy entire, unleſs where the laws of our country have laid them under neceſſary reſtraints; reſtraints in themſelves ſo gentle and moderate, as will appear upon farther enquiry, that no man of ſenſe or probity would wiſh to ſee them ſlackened. For all of us have it in our choice to do every thing, that a good man would deſire to do; and are reſtrained from nothing, but what would be pernicious either to ourſelves or our fellow citizens. So that this review of our ſituation may fully juſtify the obſer-

vation of a learned French author, * who indeed generally both thought and wrote in the ſpirit of genuine freedom; and who hath not ſcrupled to profeſs, even in the very boſom of his native country, that the Engliſh is the only nation in the world, where political or civil liberty is the direct end of its conſtitution."

Our duties to magiſtrates, and theirs to us.

My object hitherto has chiefly been the inveſtigation and diſcuſſion of our civil rights; but as theſe rights are in many ſenſes relative in reſpect to the community at large, and the magiſtrates appointed by them, ſo they neceſſarily involve certain relative duties to them, which it will be my remaining taſk to conſider; for the whole ſociety collectively, and each member of it individually, have both rights and duties mutual and reciprocal. The rights of the community are the ſubmiſſive duties of its members; the rights of the members are the protecting duties of the community.

* Mont. Spir. of Laws, 9. 5.

CHAP.

CHAP. XVI.

OF OFFENCES AGAINST THE STATE.

Reaſons for conſidering theſe offences.

IT may appear ſingular, that I ſhould attempt to explain and enforce the duties of individuals towards the ſociety, by conſidering their breach and violation of them. Were this the point, from which I had originally ſtarted the ſubject, I ſhould certainly have purſued another courſe; but as what has been already offered will I hope ſatisfy that claſs of my readers, who admit of the obligation to obſerve and comply with theſe duties *virtutis amore*, ſo I feel it incumbent upon me to throw this obligation into a new light, for the conviction of thoſe, who cannot otherwiſe than *formidine pœnæ* be induced to ſubmit unto it.

Nothing is more true, than that the baſis and whole ſuperſtructure of our conſtitution is formed of true liberty; which conſiſts in the preſervation of order for the protection of ſociety, not in the abandoned licentiouſneſs of confuſion and anarchy. The liberty of a nation is ever proportioned to the perfection of its government; the perfection of govern-

The liberty of a nation proportioned to the energy of its government.

ment is known by its energy, and that is nothing more, than the efficacy and facility, with which the executive power can enforce the laws. The laws are the direct emanations of the ſovereignty of the whole; the conſent of every individual of the community is formally included in each of the laws; and the contempt and violation of them is therefore more properly inſulting to the nation, who have made the laws, than to the magiſtrates, whoſe duty it is to execute them. The law is the unanimous will of the whole community; for the concluſion of the whole by the act of the majority does away the preſumptive poſſibility of a diſſenting individual. In this great truth is engendered the peculiar vigour of our conſtitution. Becauſe our laws are framed, *totius regni aſſenſu*, as Forteſcue obſerves; therefore is the whole kingdom indiſpenſably bound to the obſervance of them. From this aſſent of each individual ariſes a right and intereſt, which the community poſſeſſes collectively and individually, in the actual performance of the covenant and engagement, which at the paſſing of every law each individual enters into for the performance and obſervance of it. Although the government itſelf is ſaid to be founded in the original compact between the governors and

Contempt of the laws an injury to the nation.

and governed; yet the ſubſiſtence of the government depends not only upon the continuation of that original contract, but in this mutual and reciprocal covenant, engagement, or contract of every individual to abide by and enforce his own voluntary act and deed; for it is a firſt principle of our conſtitutional policy, that every law of England is the free, unbiaſſed, and deliberate act of every Engliſhman.

Our laws binding upon each individual, becauſe every one aſſents to their paſſing.

It is but to ſuch a political government as ours, that theſe, I may almoſt ſay, metaphyſical truths can be applied; they have no foundation in the firſt principle of the civil law, *quod principi placuit, legis habet vigorem.* As the will of the prince is not under the controul of the people, they have no participation in the act impoſed upon them; and its coercive obligation can be urged againſt the people upon no other ground, than that of a ſervile, timid, or compulſive acquieſcence in the arbitrary dictates of an uncontroulable power. The operative coercion and energy of a Britiſh act of parliament can never be ſo clearly ſeen, as when viewed in antitheſis to the deſpotic mandates of an arbitrary monarch. If we could bring ourſelves even to conceive a contract or compact between a people and an abſolute deſpotic ſovereign,

This reaſon applies not to arbitrary governments.

yet as the whole legiſlative power reſts ſolely in him, it neceſſarily and eſſentially precludes the very poſſibility of any mutual and reciprocal covenant, engagement, or contract of the individuals with each other; and this is the vivifying ſap, that pervades every fibre of our conſtitution.

The conſtitution of England peculiarly adapted to enforce ſubordination.

Into what an extravagant error do not they fall, who attempt to juſtify by the ſpirit of the Engliſh conſtitution the oppoſition and reſiſtance of individuals to the eſtabliſhment of its government? For if there can exiſt upon earth a government of human inſtitution, that emphatically and eſſentially condemns and precludes ſuch anomalous efforts of the diſcontented members of a community to diſturb or ſubvert the eſtabliſhment of the whole ſociety, it is the conſtitution of Great Britain. In arbitrary regal governments, where the will of the ſovereign makes the law, the aggrieved ſubject is immediately challenged by the oppreſſive mandate of his ſovereign to protect his own natural rights by perſonal reſiſtance. There is no intervening lenitive between his judgment and his feelings; the mental condemnation of an unreaſonable command is as quickly ſucceeded by the impulſe to reſiſt it, as the report ſucceeds the flaſh of a diſcharged muſquet.

quet. Nothing ſhort of the ſtricteſt paſſive obedience and non-reſiſtance can enſure to an arbitrary ſovereign the univerſal ſubmiſſion of his ſubjects. In regal governments was this doctrine engendered, foſtered, and reared; and when our kings wiſhed or attempted to erect themſelves into regal arbitrary ſovereigns, they attempted at the ſame time to tranſplant it into this country; but the ſoil and climate of a political government, ſuch as ours happily is, were little congenial with the nature of the plant. In the unnatural heat of exceſſive prerogative under the Tudors and Stuarts it was forced into a puny exotic ſhoot, that drooped, withered, and decayed, when expoſed to the natural ſoil and open free air of the Engliſh conſtitution.

The doctrine of *paſſive obedience* and *non-reſiſtance* can only exiſt in arbitrary governments.

Few or none of my readers are ignorant of the fatal effects, which have proceeded from the rancorous differences and diſputes upon this doctrine, that formerly divided and diſgraced our unhappy country. It has ſtained with blood and infamy the field, the judicature, the ſenate, and the church. Of this, as of moſt other party differences in this country, it may moſt truly be ſaid, * "The heat of honeſt men being once raiſed, and the cooler

The fatal effects of attempting to eſtabliſh theſe doctrines.

* Yorke's Conſid. on the Law of Forfeiture, p. 3.

paſſions of artful men diſſembled by a ſpecious zeal for public good, the calm voice of reaſon and the law finds no attention; and perſons of leſs underſtanding, incited by example, add greatly to the weight of that clamour, which for a time has ever been too ſtrong for argument." Thus if we conſider but coolly and impartially what is and ever was the real doctrine of paſſive obedience and non-reſiſtance, we ſhall find, that it could never by poſſibility have been applicable to, or practicable in the Engliſh government; for in the political form of our government, no king could ever iſſue commands, nor demand obeiſſance in any thing, which exceeded or contradicted the law of the land. * "The conſequences of ſuch a frame of government are obvious. That the *laws* are the rule to both, the common meaſure of the power of the crown, and of the obedience of the ſubject." The conſtitution can know no obedience, where there is no power to command; but there is no power given by our conſtitution to the king to command beyond the law; and therefore the conſtitution can never have had in contemplation ſuch paſſive

The impoſſibility of paſſive obedience and non-reſiſtance in our government.

† Mr. Lechmere's firſt Speech in Dr. Sacheverel's Trial.

obedience

obedience of the ſubject in that, which is not law. The ſame line, which circumſcribes and confines the power of the crown, marks the extent of the ſubjects obedience. The very uſe and admiſſion of the term *ſubject* is a metaphyſical demonſtration, that the doctrine is wholly inapplicable to the ſtate of a limited monarchy, ſuch as that of England confeſſedly is. *Subject* and *ſovereign* are correlatives; the one cannot exiſt without the other. In the Engliſh conſtitution the power of the ſovereign or king is confined or limited to that of the law; beyond this limitation the very relation ceaſes; conſequently, where there is no *king* nor *ſovereign*, there the paſſive obedience and non-reſiſtance of the *ſubject* to him is out of the queſtion, as is ſelf-evident.

In a limited monarchy the power of the king and the obedience of the ſubject co-extenſive.

To queſtion whether in our conſtitution the *paſſive obedience* and *non-reſiſtance* of the ſubject be to be maintained, is ſubſtantially to queſtion whether the *law* can bind the community and its members to ſubmiſſion. And this is a queſtion, that I have not yet found moved by the moſt devoted enthuſiaſts for regal power, with all its fanatic, arbitrary, indefeaſible *jure divino* prerogatives. In arbitrary regal governments, the law muſt ever be uncertain, becauſe the will of the prince, which conſtitutes it, is naturally uncertain, and

and his power is eſſentially unlimited, becauſe it has no external check nor controul; whoever therefore voluntarily ſubmits himſelf to the unlimited power of ſuch an uncertain legiſlature, can do it upon no other condition, than that of *paſſive obedience* and *non-reſiſtance*; for his ſubmiſſion to ſuch a power is a formal undertaking to pay the moſt unconditional and unexceptionable obedience to every command, that the will of his ſovereign ſhall ſuggeſt and enjoin. Such truly is *paſſive obedience*, which excludes reſiſtance; and ſuch *paſſive obedience* is morally, phyſically, and metaphyſically impoſſible in the happy conſtitution of our government. No one ever pretended, that our monarchy was purely regal, that is arbitrary and unlimited; but if it be limited, its power exceeds not its own bounds; where the power to command ceaſes, there ends the obligation to obey; and within this line of limitation, which is the known line of the law, the obedience and non-reſiſtance of the ſubject are as univerſally indiſpenſable, as out of it they are abſolutely impoſſible; for obedience is the effect of the relation of ſuperior and ſubject; out of the line of limitation this relation ceaſes; without the cauſe therefore the effect can certainly never be produced.

Submiſſion to arbitrary power can only be made upon the principle of paſſive obedience and non-reſiſtance.

Out of the line of the law no power to command nor obligation to obey.

If

If a national characteriſtic can be affixed to Engliſhmen beyond that of generoſity and valour, it is their implacable tenaciouſneſs of the grounds, upon which they divide themſelves into domeſtic faction and party. In order to ſupport theſe grounds, the common recourſe of each party is to the deluſive and maſked battery of general propoſitions; for it is but too true, that *qui verſatur generalibus, verſatur doloſè.* It is a common but true obſervation in ethics, that every vice hath a kindred virtue, under the garb of which it wiſhes to appear. Nothing can be more notorious, than the effect of miſapplying theſe general principles, and deducing from them the moſt oppoſite concluſions, according to the temper of the times, and diſpoſitions of the parties judging and arraigned upon them. What ſo awfully terrible, as to behold the decollation of a Sidney by the ſolemn judgment of his country in 1683, * for writing the political doctrine, for which he was canonized within five years after by a parlia-

Effects of miſapplying general principles.

* Colonel Algernoon Sidney was found guilty of high treaſon, chiefly for his book, which he had written, but not publiſhed upon government in anſwer to Sir Robert Filmers, and was beheaded on the 7th of December, 1683, and his attainder was reverſed by parliament in 1689, 1 W. & Mary.

mentary

mentary expiation, as an illuſtrious martyr to truth and the conſtitution.

We are I truſt now happily ſecure, that ſuch a ſcene will never be repeated in this country. But let us not in our ſecurity encourage, by diſregarding the malicious attempts of thoſe, who directly aim at diſcrediting, confounding, and ſubverting our preſent eſtabliſhment. There is an affectation of triumph in theſe innovating zealots, to emulate the glory of ſome former patriarchs of civil liberty. It would be wanton preſumption in me to attempt to delineate their contraſt, after the late maſterly portraits of the old and the new whig by the political Titian of our modern ſchool.

The binding power of parliament proportionate to the excellency of our conſtitution.

The preceding reflections have, I truſt, ſufficiently evinced, that the coercive power of the Britiſh legiſlature is binding upon every member of the community, in proportion as the Britiſh conſtitution excels all other known eſtabliſhments in wiſdom and energy. Little need be ſaid upon the ſubject of the perſons, who are bound to the duty of this deference and ſubmiſſion to its authority. Every perſon born under the allegiance of our king, as the law of England now ſtands, remains during his life a natural ſubject to him: it is a maxim, that

Who are ſubject to our laws.

nemo

nemo poteſt exuere patriam; no one can of himſelf throw off the duty of allegiance to his original native ſovereign. As no power, but that of parliament can naturalize, ſo it conſequently appears clear, that no power, but that of parliament, can diſſolve and completely do away the relation of ſubject and ſovereign between our king and a perſon born under his allegiance. The king in the plenitude of his prerogative cannot naturalize; and it ſeems conſonant with the maxim, that *it requires at leaſt as great a power to abrogate, as to enact*, that he cannot completely releaſe the allegiance of any of his ſubjects. Protection and ſubjection are relative duties; and when the law ſpeaks of *debitum ligeantiæ*, it neceſſarily carries along with it the right or credit of protection, which the ſubject is entitled to from the king, in whom is collected the whole majeſty of the ſtate, *ſubjectio trahit protectionem*. I am now conſidering what the law of England is upon this point; and I do it under correction and with deference, that if the public ſhould perceive, that an alteration in the law would be adviſable, parliament may take the ſubject under conſideration, and correct the inconveniences, that may ariſe from it.

As the king cannot naturalize, ſo he cannot releaſe the allegiance of his ſubject.

It is not in the power of an individual to throw off the obligation he owes to his native ſovereign.

Sir Matthew Hale ſays, * "That the natural born ſubject of one prince cannot by ſwearing allegiance to another prince put off or diſcharge him from that natural allegiance; for this natural allegiance was intrinſic and primitive, and antecedent to the other, and cannot be diveſted without the concurrent act of that prince, to whom it was firſt due." Although I have before ſaid, that it was competent for any member of the community to quit any particular ſociety, yet I do not mean, that he can thereby abſolve himſelf from the duties and obligations, which by his birth he contracted to it, and which revive, whenever he returns to his native community, and have their force upon all his actions, which affect or relate unto it. Thus if ſuch a perſon (as was the caſe of Dr. Storie) † having entered into the ſervice of a foreign power be taken in open war, he is indictable for treaſon, and will be treated not as an enemy of war, but as a traitor to his country. In England the in-

* Hale's Pl. Cor. 68.

† Dyer 300. He had ſworn allegiance to king Philip of Spain, and pleaded to his indictment, that he was no ſubject to queen Elizabeth, though born at Sarum; the court rejected his plea, and he was executed as a traitor.

heritable capacity is the teſt of a perſon's being a natural born ſubject; whoever therefore can inherit and tranſmit lands in England is under the protection of our king, owes him his allegiance, and whenever he is within the territorial juriſdiction of our laws, he is completely amenable to them.

The inheritable capacity is the teſt of a perſon's being a natural born ſubject.

The ſingularity and great inconveniency of the law, as it now ſtands, conſiſts in our being obliged by ſome acts of parliament (as the navigation acts, &c. &c.) to conſider and act by ſome perſons in reſpect of navigating veſſels, paying the alien duties, and in other reſpects, as if they were really aliens, whilſt they enjoy by birthright the inheritable capacity within this kingdom, which eſſentially carries with it all the rights and liberties of a native Engliſhman. The authority of Calvin's caſe never having been queſtioned nor impeached, remains to this day a part of the common law of the land; and it is known to every one, that the common law can only be altered by an expreſs ſtatute. * "For ſtatutes are not preſumed to make any alteration in the common law, further or otherwiſe, than the act does expreſsly declare; therefore in all general matters the law pre-

Inconveniences of the preſent law of alienage.

* 11 Mod. 150.

ſumes

ſumes the act did not intend to make any alteration; for if parliament had had that deſign, they would have expreſſed it in the act." I have never been able, and I have long ſearched, to find the ſtatute, which alters the law laid down in the moſt ſolemn and unequivocal manner in Calvin's caſe.

The inheritable capacity, which attached to a man by his birth within the dominions of the king of England, not only remains to him * "whilſt the country, in which he was born remains under the ſubjection of the prince, to whom it was ſubject at the time of his birth, but for ever after in caſe it changes its ſovereign.

"No ſubſequent acquiſition of a country by any prince or ſtate, whether by conqueſt, inheritance, exchange, or purchaſe, ſhall give this right to thoſe, who were born during the poſſeſſion of the former ſovereign. Thus for example, every perſon born within any of the Britiſh colonies in America, before their independence was acknowledged by this country, is and ever will be a natural born ſubject of Great Britain, capable of inheriting lands in this country, and claiming all the other rights of an Engliſhman. And

* Inveſtigation of the Native Rights of Britiſh Subjects, by the author, p. 19.

for

for the ſame reaſon, every perſon born in Canada, whilſt it remained under the ſubjection of the French king, cannot claim the rights of a natural born Engliſhman (although now a Britiſh ſubject) without an expreſs act of naturalization. The judgment of the court upon this point in Calvin's caſe is thus expreſſed by my Lord Coke: * "For as the antenati *(or thoſe born before the union of the two crowns of England and Scotland)* remain aliens, as to the crown of England, becauſe they were born, when there were ſeveral kings of the ſeveral kingdoms, and the uniting of the kingdoms by deſcent ſubſequent cannot make him a ſubject to that crown, to which he was an alien at the time of his birth; ſo albeit the kingdom (which Almighty God of his infinite goodneſs and mercy divert) ſhould by deſcent be divided and governed by ſeveral kings, yet was it reſolved, that all thoſe, that were born under one natural obedience, whilſt the realms were united under one ſovereign, ſhould remain natural born ſubjects and no aliens; for that naturalization due and veſted by birthright cannot by any ſeparation of the crown afterwards be taken away; nor he,

Canadians, born under the French government, aliens; Boſtonians, born under the Britiſh government, inheritable in England.

No exchange of kingdom can alter the condition of a man's inheritable capacity.

* Calvin's Caſe, ubi ſupra.

that was by judgment of law a natural born ſubject at the time of his birth, become an alien by ſuch a matter *ex poſt facto*, and in that caſe, upon ſuch an accident our *poſt natus* may be *ad fidem utriuſque regis.*"

Aliens reſident are amenable to the laws.

Beſides this original native obligation, which is contracted by birth, to ſubmit to the laws of the country, in which we are born, whoever chuſes to reſide in a particular community, and receives the protection of its laws, becomes of courſe amenable to them, and as much liable to their rigour and ſeverity, if he violate them, as the natural born ſubject. The indulgences, which our laws grant to aliens reſident in this country are ſo very ample, that their obligation and compulſion to obſerve them can never be juſtly complained of.

The duty and ſubmiſſion of the ſubject paid to the executive power.

When the general original duty and ſubmiſſion of the members of this community are called into action, the conſtitution, which has concentered and depoſited the collective majeſty of the whole people in the executive power, directs and obliges them to pay and expreſs this duty and ſubmiſſion to the perſon, in whom the executive power of government is veſted. When this duty or ſubmiſſion is practically ſpoken of, it is called

allegiance;

allegiance; and this my Lord Coke ſays, * "is a true and faithful obedience of the ſubject due to his ſovereign." In this ſenſe therefore I ſhall always treat of it; for thus only in reality is the duty performed. † Sir Michael Forſter ſays, that this allegiance "is undoubtedly due to the perſon of the king; but in that reſpect *natural* allegiance differeth nothing from what we call *local*. For allegiance conſidered in every light is alike due to the perſon of the king; and is paid, and in the nature of things, muſt conſtantly be paid to that prince, who for the time being is in actual and full poſſeſſion of the regal dignity."

Natural allegiance in ſome things differs not from local.

Whatever actions of individuals tend to vilify, confuſe, diſturb, interrupt, ſubvert, or deſtroy that political form of government, which the majority of the community have eſtabliſhed, and choſen to ſupport and maintain, they are, properly ſpeaking, public wrongs, crimes, or miſdemeanors; and becauſe our conſtitution collects and concentrates the majeſty of the ſtate in the perſon, to whom it entruſts the executive power of the government, therefore with great propriety it ex-

What are public crimes or miſdemeanors.

* Calvin's Caſe, 5.
† Crown Law, 184.

The crown taken metaphorically for the perſon, who wears it.

preſſes the code of criminal law by the term *pleas of the crown.* I bluſh at the opportunity of obſerving, that when our law books mention the rights, privileges, and prerogatives of *the* crown, they ſpeak metaphorically only of the perſon, who wears it; and not in that literal ſenſe, which a modern philoſopher of illuminating fame has moſt ingeniouſly and wiſely annexed to the phraſe. * The crown then, or (to ſpeak more intelligibly to ſome of my readers) the king or queen regnant of Great-Britain, in † "whom centers the majeſty of the whole community, is ſuppoſed by the law to be the perſon injured by every infraction of the public rights belonging to that community, and is therefore in all caſes the proper proſecutor for every public offence. For all public wrongs ‡ "are offences either againſt the king's peace or his crown and dignity, and are ſo laid in every indictment; for though in their conſequences they generally ſeem (except in the

* "In England this right (viz. of making peace and war) is ſaid to reſide in a metaphor ſhewn at the tower for ſixpence or a ſhilling a-piece; ſo are the lions; and i would be a ſtep nearer to reaſon, to ſay it reſided in them; for any inanimate metaphor is no more than a hat or a cap." *Payne*'s Rights of Man, p. 61.

† Blak. Com. b. iv. c. i. p. 2.

‡ Blak. Com. b. i. c. vii. p. 286.

caſe

caſe of treaſon, and a very few others) to be rather offences againſt the kingdom, than the king; yet as the public, which is an indiviſible body, has delegated all its power and rights, with regard to the execution of the laws, to one viſible magiſtrate, all affronts to that power and breaches of thoſe rights are immediately offences againſt him, to whom they are ſo delegated by the public. He is therefore the proper perſon to proſecute for all public offences and breaches of the peace, being the perſon injured by the law."

All proſecutions in the name of the king, as the perſon injured, by the law.

It is beyond my intention to enter into an elaborate eſſay or treatiſe upon the criminal law of England. I refer ſuch of my readers, who wiſh to be more accurately informed upon this ſubject, to the more diffuſed and learned works of Hale, Hawkins, Forſter, Blakiſton, and others, who have handled it at large. I ſhall merely adhere to the general principles of crown law, in order the more pointedly to enforce the obligation of every reſident member of the community to obſerve and ſubmit to it, and the fiduciary duty of our governors to enſure and protect the community againſt all ſecret and open efforts and attempts to render it contemptible, inefficient, or impracticable.

Obligation of all reſident ſubjects to ſubmit to, and duty of magiſtrates to enforce the law.

It is a concluſion of falſe delicacy to ſuppoſe, that the knowledge of the criminal or crown law of England is to be confined to acting magiſtrates, practitioners of the law, or thoſe unfortunate wretches, who have been or are likely to become the paſſive objects of its rigour and ſeverity. Would to God that the barefaced and boaſted efforts of ſome of the diſcontented minority to traduce, weaken, diſturb, or ſubvert the preſent eſtabliſhment, did not ſuperadd a weight of reaſons to thoſe, upon which the late judges Blakiſton and Forſter grounded the neceſſity of rendering this knowledge general to all men. * " The knowledge of this breach of juriſprudence, which teaches the nature, extent, and degrees of every crime, and adjuſts to it its adequate and neceſſary penalty, is of the utmoſt importance to every individual in the ſtate. For († as a very great maſter of the crown law has obſerved upon a ſimilar occaſion) no rank or elevation in life, no uprightneſs of heart, no prudence or circumſpection of conduct ſhould tempt a man to conclude, that he may not at ſome time or other be deeply intereſted in theſe

The general knowledge of the crown law neceſſary for all men.

* Blak. Com. b. iv. c. ii. p. 2.

† Forſter.

reſearches.

reſearches. The infirmities of the beſt among us, the vices and ungovernable paſſions of others, the inſtability of all human affairs, and the numberleſs unforeſeen events, which the compaſs of a day may bring forth, will teach us (upon a moment's reflection) that to know with preciſion what the laws of our country have forbidden, and the deplorable conſequences, to which a wilful diſobedience may expoſe us, is a matter of univerſal concern."

What a crime or miſdemeanor.

* " A crime or miſdemeanor is an act committed or omitted in violation of a public law, either forbidding or commanding it. This general definition comprehends both crimes and miſdemeanors, which, properly ſpeaking, are mere ſynonymous terms; though, in a common uſage, the word *crimes* is made to denote ſuch offences, as are of a deeper and more atrocious dye; while ſmaller faults, and omiſſions of leſs conſequence are comprized under the gentler name of *miſdemeanors* only.

Difference between public and private wrongs, and between crimes and civil injuries.

" The diſtinction of public wrongs from private, of crimes and miſdemeanors from civil injuries, ſeems principally to conſiſt in this; that private wrongs or civil injuries

* Blak. Com. b. iv. c. i. p. 5.

are an infringement or privation of the civil rights, which belong to individuals, conſidered merely as individuals; public wrongs, or crimes and miſdemeanors, are a breach and violation of the public rights and duties due to the whole community, conſidered as a community in its ſocial aggregate capacity. As if I detain a field from another man, to which the law has given him a right, this is a civil injury, and not a crime; for here only the right of an individual is concerned, and it is immaterial to the public, which of us is in poſſeſſion of the land; but treaſon, murder, and robbery are properly ranked among crimes; ſince beſides the injury done to individuals, they ſtrike at the very being of ſociety, which cannot poſſibly ſubſiſt, where actions of this ſort are ſuffered to eſcape with impunity.

"In all caſes the crime includes an injury; every public offence is alſo a private wrong, and ſomewhat more; it affects the individual, and it likewiſe affects the community. Thus treaſon in imagining the king's death involves in it conſpiracy againſt an individual, which is alſo a civil injury; but as this ſpecies of treaſon in its conſequences principally tends to the diſſolution of government, and the deſtruction thereby of the order and peace of ſociety,

ſociety, this denominates it a crime of the higheſt magnitude. Murder is an injury to the life of an individual; but the law of ſociety conſiders principally the loſs, which the ſtate ſuſtains by being deprived of a member, and the pernicious example thereby ſet for others to do the like."

The groſſer and more common crimes known to all.

I take it for granted, that few or none of my readers will be either ſo circumſtanced or diſpoſed, as to ſtand in need of information or admonition to avoid the more common, groſs, and notorious treaſons, felonies, and miſdemeanors, which generally make up the black catalogues of our criminal code. As little do we expect to find a man within the circle of our acquaintance ignorant, that rebellion, murder, forgery, and theft are criminal in the eye of the law, as we do to find him diſpoſed to become guilty of them.

Some actions ſeem not ſo heinous as to deſerve capital puniſhment.

It cannot be denied, but that there are ſome leſs conſiderate ſtatutes ſtill remaining in our written code of law, that have rendered certain actions capitally criminal, that in their nature do not appear to carry with them that heinouſneſs of guilt, as to require for atonement the blood of the delinquent; ſuch amongſt others are * breaking down the

* 9 Geo. I. c. xxii.

mounds

mounds of a fiſh pond, or cutting down a fruit tree in an orchard, or a ſhrub in a pleaſure ground. Such actions cannot certainly be committed without ſome civil injury being done thereby to our neighour; and the neceſſary premonitions againſt them will be more properly enforced and better received from the pulpit or the bench, than from private lecture. We do not however arrogantly upbraid or queſtion the power of parliament, that once found it expedient to enact theſe laws, but with Judge Blakiſton we hint it with decency to thoſe, whoſe ſtations enable them to judge, that this great rigour may be no longer neceſſary to prevent the miſchief.

Epidemic rage for illumination.

My primary object in making this publication is to ſettle and reconcile the minds of my countrymen to the preſent form of our conſtitution and government. I find many of them ſeized with an epidemic rage for illumination. The malady in its higheſt paroxiſm is of no dangerous tendency, unleſs injudiciouſly treated; a fair practitioner cannot fail from improving the conſtitution of his patient by the application of the moſt ſimple of all remedies; but the noxious draughts of the empyric will aſſuredly render the diſeaſe irremediable.

Daily experience ſhews, that habit familiarizes us to the moſt dangerous and tremendous objects. Diſcourſes upon the moſt terrific ſubjects by frequency loſe all their horror. An artful envelop will convey the moſt diſſolute ſentiment to the chaſteſt heart; and a ſentimental diſguiſe will ſometimes lodge the very rankeſt treaſon in a breaſt of unſullied loyalty. Loud is the cry of duty upon every one, who ſees his neighbour expoſed to the danger, to ſound the alarm. Which of you, my countrymen, could look unmoved upon your child, your friend, your love, in the act of taſting a fair tempting fruit, which you knew contained a deadly poiſon?

We eaſily familiarize with the moſt terrific objects.

Cicero ſaid truly, *ea ſunt animadvertenda peccata maximè, quæ difficillime præcaventur**; thoſe crimes are to be the moſt loudly cenſured, which are the moſt difficult to prevent. When therefore I perceive many of my fellow citizens ſeduced by the falſe reaſoning of certain modern publications, firſt into diſcontent and contempt of government, then into the moſt treaſonable wiſhes for its utter ſubverſion, how are we to prevent theſe ſentiments from breaking out into overt acts of rebellion, but by dragging forth from his

Greateſt caution to be had againſt miſchiefs that are the leaſt ſuſpected.

* Pro Sexto Roſcio, 40.

traitorous

traitorous cell of darkneſs the lurking ſpirit of ſeduction? Expoſed to the broad day light of the Britiſh conſtitution, his hideous deformity will overwhelm with horror the very dupes of his artful diſguiſe.

According to the principles already laid down, there can be no greater coercion upon ſubjects to obey the laws of their country, than what is impoſed by our conſtitution. As each individual gives his aſſent to every law, ſo has he an intereſt in their obſervance and preſervation. Every ſort of condemnation, reſiſtance, and oppoſition to the law, is an injury to thoſe, who enacted it; the contempt of magiſtrates is an inſult to the community, whoſe delegates they are; the impeachment of their authority is an arraignment of the power of the people, who gave it; and a diſreſpect for the king is the moſt direct contempt of the people, whoſe majeſty is collected in his awful perſonage.

Injuries done to the community by the violation of the laws.

The grand protecting principle of our conſtitution is, not to permit an injury without a remedy; nor can it be conceived, that the conſtitution itſelf, which is the ſource and reſervoir of all the laws and rights of the people, ſhould leave itſelf and the community ſo unprotected, as to be unable to preſerve the collective corporate rights of the whole, whilſt

Self protecting rights of the community.

whilſt it enables individuals to preſerve their ſubordinate rights, which ſpring out of them.

It is evident, that whoever has a right to be protected, has a tranſcendent right to preſerve the means of his protection. The rights and liberties of Engliſhmen can only be protected by the conſtitution and government; and they can no longer protect, than they preſerve their reſpect, vigor, and energy. It is not only the intereſt, but the duty of every Engliſhman to ſupport and preſerve them; and therefore political criminality cannot be carried to a higher pitch, than a determined intention, deſire, and attempt to vilify, weaken, and overturn the conſtitution and government. If the mind be clearly bent upon the miſchief, the means adopted to bring it to bear are very immaterial; though no means can be more obnoxious, than attempts to infect the minds of others with the deadly contagion, by ſpreading it as widely as poſſible, in books diſguiſed under deluſive and inſidious titles. For confident I am, that few of my countrymen would read, much leſs would they encourage and promote the circulation of any book, which beſpoke upon the face of it an avowed intention and deſign of traducing, diſturbing, and overturning

The preſervation of our rights depends upon the energy of government.

Seditious books publiſhed under deluſive titles.

overturning the conſtitution and government of Great Britain. As the author and publiſher of ſuch a book would upon an impartial trial by Engliſhmen certainly be found guilty of ſedition and treaſon, ſo could the encouragers and promoters of ſuch a ſeditious and treaſonable libel little expect to be innocently acquitted by a fair and upright jury of their countrymen.

Conſiderations of ſtate tranſcendent over private conſiderations.

If the private rights of individuals are to be protected and preſerved from civil injury and invaſion, how neceſſary for that very purpoſe is it, that the protecting and preſerving power itſelf ſhould be kept up in unimpaired vigor and perfection; nay ſo tranſcendently ſuperior to private conſiderations are the conſiderations of the ſtate, that * "though laws prevent conſequences injurious to particulars, where they can conſiſtently with ſocial good, yet in matters, which concern the exiſtence of the ſociety, or government, conſequences injurious to particulars muſt not only be ſuffered to take place, but even ſought for and indulged, if they have a tendency to prevent conſequences injurious to government itſelf. On this reaſon

* Yorke's Conſiderations on the Law of Forfeiture, p. 40, 41.

ſtand

ſtand thoſe ſevere laws, which have been made in ſeveral ſtates againſt neutrality in times of common danger. It is agreeable to the policy and original compact of government to blend and involve the intereſt of every member with its own." So adds this learned conſtitutional writer. "Nothing is more natural, than the conſtruction, which civil laws have put on treaſons againſt government, than when a man endeavours the diſſolution of it, he means to diſclaim all thoſe benefits and rights, which it has either made him capable to enjoy, or the inſtrument to convey." Whence elſewhere comparing the *imperial* with the *conſular* ſtate of ancient Rome, he ſays: * "An unguarded ſaying was treaſon againſt emperors; but in a free ſtate a man could only be accuſed of actions, which had a direct tendency to overturn government." And although he ſays, that Auguſtus on account of the licentious writings and converſation of Caſſius Severus, had cauſed the matter of libel to be treated capitally, as a crime of *læſa majeſtas*, yet † "the mildneſs of his nature inclined him, and the liberty of Rome ſo lately loſt, made

To attempt the diſſolution of government, is to diſclaim the rights of ſociety.

* Yorke's Conſiderations on the Law of Forfeiture, p. 51.

† Ibid. p. 50.

it

it his intereſt, not to deviate in things of this high importance from the conſtitution of his country. At the ſame time he ſaw his own ſecurity and the tranquillity of the ſtate depended on the exacteſt ſupport of his authority, and the execution of theſe laws." With little plauſibility can the right of publicly arraigning government be inſiſted upon by thoſe, who trace our civil rights from an early date. * "The old Britons were very careful of domeſtic peace, in preventing private caballing and ſeditious reflections upon adminiſtration; their law allowing none but the magiſtrates to talk of the affairs of the commonwealth, and that only in open council."

Execution of the laws neceſſary for the preſervation of ſociety.

It is neceſſary in every ſtate, but emphatically ſo in the political government of Great Britain, in which the people make the laws, that the authority and execution of them ſhould be ſtrictly and even rigorouſly ſupported. † "The proſperity and greatneſs of empires ever depended, and ever muſt depend upon the uſe their inhabitants make of their reaſon in deviſing wiſe laws, and the

* Gurdon, vol. i. p. 17. who quotes Bodin de Rep. l. i. c. 4.

† Erſkine's Argument in the Caſe of the Dean of St. Aſaph, p. 211.

ſpirit

ſpirit and virtue, with which they watch over their juſt execution."

The great criterion, by which criminality can be affixed to any writing or publication, is the eſtabliſhment of this point, *quo animo* it was written or publiſhed; for *actus non facit reum, niſi mens ſit rea*; the mere phyſical action is not in its nature ſuſceptible of guilt or criminality; the vicious and malicious intention of the mind alone can affix immorality, criminality, or guilt unto it; as is clearly diſtinguiſhed in the caſes of chance-medley and murder. * "So lord Camden, in proſecuting the late Dr. Shebbeare, told the jury, that he did not deſire their verdict upon any other principle, than their ſolemn conviction of the truth of the information, which charged the defendant with a wicked deſign to alienate the hearts of the ſubjects of this country from their king upon the throne." And this reſpectable peer followed cloſely the principle of the great chief juſtice Holt, who in Mr. Tutchin's caſe † held a ſimilar language to the jury. "Now you have heard this evidence, you are to conſider whether you are ſatisfied, that Mr. Tutchin is guilty of writing, compoſing, and pub-

The guilt of a crime conſiſts in the mind and intention.

* Erſk. ibid. p. 205.

† State Trials, vol. v. p. 528.

liſhing theſe libels. They ſay, they are innocent papers and no libels, and they ſay nothing is a libel, but what reflects upon ſome particular perſon. But this is a very ſtrange doctrine, &c. If people ſhould not be called to account for poſſeſſing the people with an ill opinion of the government, no government can ſubſiſt, &c."

Writing againſt government a crime.

Some publications of the preſent day, which ſeem to have acquired a more extenſive circulation, than from the bare chance ſale of the impreſſion, appear to me to have been written, not with an immediate view or intention of enforcing due ſubmiſſion and ſubordination to government. When an author commits himſelf in print, he opens an univerſal correſpondence with all mankind; and I ſhall therefore claim no other, than the conſtitutional liberty of the preſs, to warn my countrymen of the real unequivocal import and tendency of one out of many of theſe late publications, which has appeared under the deluſive and inſidious title of the *Rights of Man*. The author ſhall not be interrupted by me in the right, which he claims of ſpeaking for himſelf; nor will I attempt to invade the right of any one of my readers to think for himſelf, if he undertake to judge *quo animo* theſe doctrines were written, and continue

now

now to be publiſhed. I ſhall not introduce one obſervation or comment of my own.

* " There never did, there never will, and there never can exiſt a parliament, or any deſcription of men, or any generation of men, in any country, poſſeſſed of the right or the power of binding and controuling poſterity to the *end of time*, or of commanding for ever how the world ſhall be governed, or who ſhall govern it; and therefore all ſuch clauſes, acts, or declarations, by which the makers of them attempt to do what they have neither the right nor the power to do, nor the power to execute, are in themſelves null and void."

† " The vanity and preſumption of governing beyond the grave, is the moſt ridiculous and inſolent of all tyrannies."

‡ " It is ſomewhat extraordinary, that the offence, for which James II. was expelled, that of ſetting up power by *aſſumption*, ſhould be re-acted under another ſhape and form, by the parliament that expelled him."

§ " All therefore that can be ſaid of the clauſes of the act of ſettlement is, that they are a formality of words, of as much import, as if thoſe, who uſed them had addreſſed a congratulation to themſelves, and in the ori-

* Vid. Rights of Man, p. 9. † Ibid. p. 9.
‡ Ibid. p. 12. § Ibid. p. 14.

ental ſtile of antiquity, had ſaid, O parliament, live for ever!"

* "It will conſequently follow, that if the clauſes themſelves, ſo far as they ſet up an *aſſumed, uſurped* dominion over poſterity for ever, are unauthoritative, and in their nature null and void."

† "When I contemplate the natural dignity of man; when I feel (for nature has not been kind enough to me to blunt my feelings) for the honour and happineſs of its character, I become irritated at the attempt to govern mankind by force and fraud, as if they were all knaves and fools, and can ſcarcely avoid diſguſt at thoſe, who are thus impoſed upon."

‡ "Can then Mr. Burke produce the Engliſh conſtitution? If he cannot, we may fairly conclude, that though it has been ſo much talked about, no ſuch thing as a conſtitution exiſts, or ever did exiſt, and conſequently that the people have yet a conſtitution to form."

§ "The Engliſh government is one of thoſe, which aroſe out of a conqueſt, and not out of ſociety, and conſequently it aroſe over the people; and though it has been much

* Rights of Man, p. 14. † Ibid. p. 51.
‡ Ibid. p. 54. § Ibid.

modified

modified from the opportunity of circumſtances ſince the time of William the Conqueror, the country has never yet regenerated itſelf, and is therefore without a conſtitution."

* "In England, game is made the property of thoſe, at whoſe expence it is not fed; and with reſpect to monopolies, the country is cut up into monopolies. Every chartered town is an ariſtocratical monopoly in itſelf, and the qualification of electors proceeds out of thoſe chartered monopolies. Is this freedom? Is this what Mr. Burke means by a conſtitution?"

† "In theſe chartered monopolies, a man coming from another part of the country is hunted from them, as if he were a foreign enemy. An Engliſhman is not free of his own country; every one of thoſe places preſents a barrier in his way, and tells him he is not a freeman—that he has no rights."

‡ "Every thing in the Engliſh government appears to me the reverſe of what it ought to be, and of what it is ſaid to be. The parliament, imperfectly and capriciouſly elected as it is, is nevertheleſs *ſuppoſed* to hold the national purſe in *truſt* for the nation; but in the manner, in which an Engliſh parlia-

* Rights of Man, p. 58. † Ibid.
‡ Ibid. p. 60.

ment is conſtructed, it is like a man being both mortgager and mortgagee; and in the caſe of miſapplication of truſt, it is the criminal ſitting in judgment upon himſelf."

* " In England, the right of war and peace is ſaid to reſide in a *metaphor*, ſhewn at the Tower for ſixpence or a ſhilling a-piece; ſo are the lions; and it would be a ſtep nearer to reaſon to ſay it reſided in them; for any inanimate metaphor is no more than a hat or a cap."

† " It may with reaſon be ſaid, that in the manner the Engliſh nation is repreſented, it ſignifies not where this right reſides, whether in the crown or in the parliament. War is the common harveſt of all thoſe, who participate in the diviſion and expenditure of public money in all countries. It is the art of *conquering at home*; the object of it is an increaſe of revenue; and as revenue cannot be increaſed without taxes, a pretence muſt be made for expenditures. In reviewing the hiſtory of the Engliſh government, its wars and its taxes, a ſtander-by, not blinded by prejudice, nor warped by intereſt, would declare, that taxes were not raiſed to carry on wars, but that wars were raiſed to carry on taxes."

* Rights of Man, p. 61. † Ibid.

" The

* " The portion of liberty enjoyed in England, is juſt enough to enſlave a country by, more productively than by deſpotiſm; and that, as the real object of all deſpotiſm is revenue, that a government ſo formed obtains more than it could, either by direct deſpotiſm, or in a full ſtate of freedom, and is therefore on the ground of intereſt oppoſed to both."

† " Ariſtocracy is a law againſt every law of nature, and nature herſelf calls for it's deſtruction. Eſtabliſh family juſtice, and ariſtocracy falls. By the ariſtocratical law of primogeniture*ſhip*, in a family of ſix children, five are expoſed. Ariſtocracy has never but *one* child; the reſt are begotten to be devoured; they are thrown to the cannibal for prey, and the natural parent prepares the unnatural repaſt."

‡ " There is an unnatural unfitneſs in an ariſtocracy to be legiſlators for a nation; their ideas of *diſtributive juſtice* are corrupted at the very ſource; they begin life by trampling on all their younger brothers and ſiſters, and relations of every kind, and are taught and educated ſo to do. With what ideas of juſtice or honour can that man enter an houſe

* Rights of Man, p. 62. † Ibid. p. 69.
‡ Ibid. p. 70.

of legiſlation, who abſorbs in his own perſon the inheritance of a whole family of children, or doles out to them ſome pitiful portion with the inſolence of a gift?"

* "A body of men holding themſelves accountable to nobody, ought not to be truſted by any body."

† "By engendering the church with the ſtate, a ſort of mule animal capable only of deſtroying, and not of breeding up, is produced, called *the church eſtabliſhed by law*."

‡ "The revolution of 1688, however from circumſtances it may have been exalted beyond its value, will find its level; it is already on the wane, eclipſed by the enlarging orb of reaſon, and the luminous revolutions of America and France. In leſs than another century it will go, as well as Mr. Burke's labours, to the family vault of all the Capulets. Mankind will then ſcarcely believe, that a country calling itſelf free, would ſend to Holland for a man, and clothe him with power, on purpoſe to put themſelves in fear of him, and give him almoſt a million ſterling a year for leave to *ſubmit* themſelves and their poſterity, like bond-men and bond-women, for ever."

* Rights of Man, p. 71. † Ibid. p. 76.
‡ Ibid. p. 82.

"As

* "As to who is king in England or elſewhere, or whether there is any king at all, or whether the people chuſe a Cherokee chief, or a Heſſian huſſar for a king, is not a matter that I trouble myſelf about."

† "This ought to be a caution to every country, how it imports foreign families to be kings. It is ſomewhat curious to obſerve, that although the people of England have been in the habit of talking about kings, it is always a foreign houſe of kings; hating foreigners, yet governed by them: it is now the houſe of Brunſwick, one of the petty tribes of Germany."

‡ "Government with inſolence is deſpotiſm; but when contempt is added it becomes worſe; and to pay for contempt is the exceſs of ſlavery. This ſpecies of government comes from Germany, and reminds me of what one of the Brunſwick ſoldiers told me, who was taken priſoner by the Americans in the late war—'Ah!' ſaid he, 'America is a fine free country, it is worth the people's fighting for; I know the difference by knowing my own; in my own country, if the prince ſays, Eat ſtraw, we eat ſtraw.' God help that country, thought I,

* Rights of Man, p. 122. † Ibid. p. 123.
‡ Ibid. p. 124.

be

be it England or elſewhere, whoſe liberties are to be protected by German principles of government and princes of Brunſwick."

* " Mr. Burke talks about what he calls an hereditary crown, as if it were ſome production of nature; or as if, like time, it had a power to operate not only independent, but in ſpite of man; or as if it were a thing or a ſubject univerſally conſented to. Alas! it has none of thoſe properties, but is the reverſe of them all. It is a thing in imagination, the propriety of which is more than doubted, and the legality of which in a few years will be denied."

† " If men will permit a ſecond reflection to take place, and carry that reflection forward but one remove out of their own perſons to that of their offſpring, they will then ſee that hereditary ſucceſſion become in its conſequences the ſame deſpotiſm to others, which they reprobated for themſelves. It operates to preclude the conſent of the ſucceeding generation, and the preclusion of conſent is deſpotiſm."

‡ As therefore hereditary ſucceſſion is out of the queſtion with reſpect to the *firſt* generation, we have now to conſider the cha-

* Rights of Man, p. 126. † Ibid. p. 127.
‡ Ibid. p. 128.

racter,

racter, in which *that* generation acts with reſpect to the commencing generation, and to all ſucceeding ones. It aſſumes a character to which it has neither right nor title."

* "After all, what is this metaphor called a crown, or rather what is monarchy? Is it a thing, or is it a name, or is it a fraud? Is it 'a contrivance of human wiſdom,' or of human craft to obtain money from a nation under ſpecious pretences? Is it a thing neceſſary to a nation? If it is, in what does that neceſſity conſiſt, what ſervices does it perform, what is its buſineſs, and what are its merits? Doth the virtue conſiſt in the metaphor, or in the man? Doth the goldſmith that makes the crown, make the virtue alſo? Doth it operate like Fortunatus's wiſhing cap, or Harlequin's wooden ſword? Doth it make a man a conjuror? In fine, what is it? It appears to be a ſomething going much out of faſhion, falling into ridicule."

† "If government be what Mr. Burke deſcribes it, 'a contrivance of human wiſdom,' I might aſk him, if wiſdom was at ſuch a low ebb in England, that it was become neceſſary to import it from Holland and from

* Rights of Man, p. 130. † Ibid.

Hanover?

Hanover? But I will do the country the juſtice to ſay, that was not the caſe; and even if it was, it miſtook the cargo. The wiſdom of every country, when properly exerted, is ſufficient for all its purpoſes; and there could exiſt no more real occaſion in England to have ſent for a Dutch ſtadtholder, or a German elector, than there was in America to have done a ſimilar thing."

* "If monarchy is a uſeleſs thing, why is it kept up any where? and if a neceſſary thing, how can it be diſpenſed with?"

† "When the people of England ſent for George the Firſt (and it would puzzle a wiſer man, than Mr. Burke to diſcover for what he could be wanted, or what ſervice he could render) they ought at leaſt to have conditioned for the abandonment of Hanover. Beſides the endleſs German intrigues, that muſt follow from a German elector being king of England, there is a natural impoſſibility of uniting in the ſame perſon the principles of freedom, and the principles of deſpotiſm, or, as it is uſually called in England, arbitrary power; a German elector is in his electorate a deſpot; how then could it be expected, that he ſhould be attached to prin-

* Rights of Man, p. 132. † Ibid. p. 133.

ciples

ciples of liberty in one country, while his intereſt in another was to be ſupported by deſpotiſm? The union cannot exiſt; and it might eaſily have been foreſeen, that German electors would make German kings."

* "A German elector trembles for the fate of deſpotiſm in his electorate; and the duchy of Mecklenburgh, where the preſent queen's family governs, is under the ſame wretched ſtate of arbitrary power, and the people in ſlaviſh vaſſalage."

† "With reſpect to the houſe of commons, it is elected but by a ſmall part of the nation."

‡ "The continual uſe of the word *conſtitution* in the Engliſh parliament, ſhews there is none; and that the whole is merely a form of government without a conſtitution, and conſtituting itſelf with what powers it pleaſes. If there were a conſtitution, it certainly could be referred to; and the debate on any conſtitutional point would terminate by producing the conſtitution.

‖ "Whether it be the court of Verſailles, or the court of St. James, or of Carlton-houſe, or the court in expectation, ſignifies

* Rights of Man, p. 134. † Ibid. p. 139. ‡ Ibid.
‖ Ibid. p. 151.

not;

not; for the caterpillar principle of all courts and courtiers are alike. They form a common policy throughout Europe, detached and ſeparate from the intereſt of nations; and while they appear to quarrel, they agree to plunder."

Leſt however the public ſhould not have been ſufficiently initiated by the foregoing precepts into the full purity and depth of the illuminating myſteries of this apoſtle of modern liberty, and leſt any of his devoted diſciples may ſtill retain the ſlighteſt tincture of deference, attachment, or ſubmiſſion to our conſtitution and government, he has in another later publication more determinately attempted to irradiate their minds with a blaze of new lights, and elevate their hearts to a manly reſiſtance againſt the tyrannical uſurpations of their preſent rulers. * *Government*, ſays he, *is but now beginning to be known*; and † *there is a morning of reaſon riſing upon man on the ſubject of government, that has not appeared before.* If the world however ſhould hereafter be leſt groping about in the dim twilight of opening day, their future

* Payne's Rights of Man, part the ſecond, containing principles and practices, p. 75.

† Ibid. p. 76.

falls,

falls, wanderings, and errors will certainly not lie at the door of this new Phœbus; he has now ſpent all his powers in vainly ſtimulating his jaded courſers to the meridian goal. Let the public judge of his laſt intentions and efforts by the following ſamples:

* "On all caſes that apply univerſally to a nation, with reſpect to ſyſtems of government, a jury of *twelve* men is not competent to decide."

† "The only effectual jury in ſuch caſes would be a convention of the whole nation fairly elected; for in all ſuch caſes the whole nation is the vicinage."

‡ "As revolutions have begun (and as the probability is always greater againſt a thing beginning, than of proceeding after it has begun) it is natural to expect, that other revolutions will follow."

‖ "The origin of the government of England, ſo far as relates to what is called its line of monarchy, being one of the lateſt, is perhaps the beſt recorded."

§ "From ſuch beginning of governments, what could be expected but a continual ſyſtem of war and extortion? It has eſtabliſhed

* Rights of Man, part 2. Pref. p. xiii. † Ibid. p. xiv.
‡ Ibid. p. 4. ‖ Ibid. p. 16. § Ibid.

itſelf into a trade. The vice is not peculiar to one more than to another, but is the common principle of all. There does not exiſt within ſuch governments a ſtamina whereon to ingraft reformation; and the ſhorteſt and moſt effectual remedy is to begin anew."

* "Man has no authority over poſterity in matters of perſonal right; and therefore no man or body of men had, or can have, a right to ſet up hereditary government."

† "All hereditary government is in its nature tyranny."

‡ "Government ought to be a thing always in full maturity. It ought to be ſo conſtructed as to be ſuperior to all the accidents, to which individual man is ſubject; and therefore hereditary ſucceſſion, by being *ſubject to them all*, is the moſt irregular and imperfect of all the ſyſtems of government."

‖ "Hereditary ſucceſſion is a burleſque upon monarchy."

§ "It requires ſome talents to be a common mechanic; but to be a king requires only the animal figure of man—a ſort of breathing automaton."

* Rights of Man, P. ii. p. 20. † Ibid. p. 21. ‡ Ibid. ‖ Ibid. p. 23. § Ibid. p. 24.

* "When the mind of a nation is bowed down by any political ſuperſtition in its government, ſuch as hereditary ſucceſſion is, it loſes a conſiderable portion of its powers on all other ſubjects and objects. Hereditary ſucceſſion requires the ſame obedience to ignorance, as to wiſdom."

† "A regency is a mock ſpecies of republic, and the whole of monarchy deſerves no better deſcription. It is a thing as various as imagination can paint. It has none of the ſtable character, that government ought to poſſeſs. Every ſucceſſion is a revolution, and every regency a counter revolution. The whole of it is a ſcene of perpetual court cabal and intrigue."

‡ "Certain it is, that what is called monarchy always appears to me a ſilly contemptible thing. I compare it to ſomething kept behind a curtain, about which there is a great deal of buſtle and fuſs, and a wonderful air of ſeeming ſolemnity; but when by any accident the curtain happens to be open, and the company ſee what it is, they burſt into laughter."

§ "We muſt ſhut our eyes againſt reaſon, we muſt baſely degrade our underſtand-

* Rights of Man, P. ii. p. 28. † Ibid. p. 35.
‡ Ibid. p. 36. § Ibid.

ing, not to ſee the folly of what is called monarchy."

* "That monarchy is all a bubble, a mere court artifice to procure money, is evident (at leaſt to me), in every character, in which it can be viewed."

† "In England, it is not difficult to perceive, that every thing has a conſtitution, except the nation."

‡ "No ſuch thing as a conſtitution exiſts in England."

§ "The attention of the government of England (for I rather chuſe to call it by this name, than the Engliſh government) appears, ſince its political connection with Germany, to have been ſo completely ingroſſed and abſorbed by foreign affairs, and the means of raiſing taxes, that it ſeems to exiſt for no other purpoſes. Domeſtic concerns are neglected; and with reſpect to regular law, there is ſcarcely ſuch a thing."

‖ "With reſpect to the two houſes, of which the Engliſh parliament is compoſed, they appear to be effectually influenced into one, and, as a legiſlature, to have no temper of its own. The miniſter, whoever he at

* Rights of Man, P. ii. p. 38.
† Ibid. p. 50.
‡ Ibid. p. 51.
§ Ibid. p. 56.
‖ Ibid. p. 63.

any

any time may be, touches it as with an opium wand, and it ſleeps obedience."

* " *All hereditary government over a people is to them a ſpecies of ſlavery.*"

† " Not a thirtieth, ſcarcely a fortieth part of the taxes, which are raiſed in England, are either occaſioned by, or applied to the purpoſes of civil government."

‡ " It is a perverſion of terms to ſay, that a charter gives rights. It operates by a contrary effect, that of taking rights away."

§ " As one of the houſes of the Engliſh parliament is in a great meaſure made up of elections from theſe corporations, and as it is unnatural, that a pure ſtream ſhould flow from a foul fountain, its vices are but a continuation of the vices of its origin."

‖ " To be a ſucceſsful candidate, he muſt be deſtitute of the qualities, that conſtitute a juſt legiſlator; and being thus diſciplined to corruption by the mode of entering into parliament, it is not to be expected, that the repreſentative ſhould be better than the man."

¶ " What is called the houſe of peers is conſtituted on a ground very ſimilar to that,

* Rights of Man, P. ii. p. 65. † Ibid. p. 81.
‡ Ibid. p. 93. § Ibid. p. 99. ‖ Ibid.
¶ Ibid. p. 100.

againſt which there is a law in other caſes. It amounts to a combination of perſons in one common intereſt."

* "For whatever their ſeparate politics as to parties may be, in this they are united. Whether a combination acts to raiſe the price of any article for ſale, or the rate of wages; or whether it acts to throw taxes from itſelf upon another claſs of the community, the principle and the effect are the ſame; and if the one be illegal, it will be difficult to ſhew that the other ought to exiſt."

† "Theſe are but a part of the miſchiefs flowing from the wretched ſcheme of an houſe of peers. As a combination, it can always throw a conſiderable portion of taxes from itſelf; and as an hereditary houſe accountable to nobody, it reſembles a rotten borough, whoſe conſent is to be courted by intereſt"

‡ "Having thus glanced at ſome of the defects of the two houſes of parliament, I proceed to what is called the crown, upon which I ſhall be very conciſe. It ſignifies a nominal office of a million ſterling a year, the buſineſs of which conſiſts in receiving the money. Whether the perſon be wiſe or fooliſh, ſane or inſane, a native or a fo-

* Rights of Man, P. ii. p. 102. † Ibid. p. 105.
‡ Ibid. p. 107.

reigner,

reigner, matters not. Every miniſtry acts upon the ſame idea that Mr. Burke writes, namely, that the people muſt be hoodwinked, and held in ſuperſtitious ignorance by ſome bug-bear or other; and what is called the crown anſwers this purpoſe, and therefore it anſwers all the purpoſes to be expected from it."

* "Notwithſtanding the ſycophancy of hiſtorians, and men like Mr. Burke, who ſeek to gloſs over a baſe action of the court by traducing Tyler, his fame will out-live their falſehood. If the barons merited a monument to be erected in Runnymede, Tyler merits one in Smithfield."

† "It has coſt England almoſt ſeventy millions ſterling to maintain a family imported from abroad, of very inferior capacity to thouſands in the nation."

‡ "Primogeniture ought to be aboliſhed, not only becauſe it is unnatural and unjuſt, but becauſe the country ſuffers by its operation."

§ "Change of miniſters amounts to nothing. One goes out, another comes in, and ſtill the ſame meaſures, vices, and extravagance are purſued. It ſignifies not, who

* Rights of Man, P. ii. p. 112. † Ibid. p. 120.
‡ Ibid. p. 148. § Ibid. p. 157.

is miniſter; the defect lies in the ſyſtem. The foundation and the ſuperſtructure of the government is bad."

* " The time is not very diſtant, when England will laugh at itſelf for ſending to Holland, Hanover, Zell, or Brunſwick for men, at the expence of a million a year, who underſtood neither her laws, her language, nor her intereſt, and whoſe capacities would ſcarcely have fitted them for the office of a pariſh conſtable. If government could be truſted to ſuch hands, it muſt be ſome eaſy and ſimple thing indeed, and materials fit for all the purpoſes may be found in every town and village in England."

† " I preſume, that though all the people of England pay taxes, not an hundredth part of them are electors, and the members of one of the houſes of parliament repreſent nobody but themſelves. There is therefore no power but the voluntary will of the people, that has a right to act in any matter reſpecting a general reform.

" ‡ I do not believe that any two men, on what are called doctrinal points, think alike, who think at all. It is only thoſe, who have not thought, that appear to agree.

* Rights of Man, P. ii. p. 161. † Ibid. p. 163.
‡ Ibid. p. 172.

It

It is in this caſe, as with what is called the Britiſh conſtitution. It has been taken for granted to be good, and encomiums have ſupplied the place of proof. But when the nation comes to examine into its principles, and the abuſes it admits, it will be found to have more defects, than I have pointed out in this work, and the former."

CHAP. XVI.

OF THE ATTEMPTS AND EFFECTS OF LEVELLERS IN THESE KINGDOMS.

Religion often made the pretext for rebellion.

* "THAT all rebellions did ever begin with the faireſt pretences for reforming of ſomewhat amiſs in the government, is a truth ſo clear, that there needs no manifeſtation thereof from example; nor were they ever obſerved to have greater ſucceſs, than when the colours for *religion* did openly appear in the van of their armed forces; moſt men being deſirous to have it really thought (how bad and vile ſoever their practices are) that zeal to God's glory is no ſmall part of their aim; which gilded bait hath been uſually held forth to allure the vulgar by thoſe, whoſe end and deſigns were nothing elſe, than to get into power, and ſo to poſſeſs themſelves of the eſtate and fortune of their more opulent neighbours."

I do not undertake to write a full hiſtory of all the diſturbances and inſurrections, which

* Dugdale's Preface to his Short View of the late Troubles in England.

have

have been raiſed againſt the government of this realm, but only to ſubmit to the reflection of my countrymen ſome of the convulſions in the ſtate, which have been heretofore produced by the adoption and propagation of ſuch levelling principles, as are now ſo frequently and ſo boldly attempted to be maintained and circulated, in order that a premonitory review of paſt ſcenes may prevent the neceſſity of corrective ſeverity in future.

Convulſions are produced in the ſtate by levelling principles.

The firſt perſon, who appears in our chronicles to have acted openly upon this levelling principle, was Walter Tyler; who having been ſlain in the moſt emphatical act of his calling, viz. that of levelling himſelf with his ſovereign, may be properly called the protomartyr of levellers in England.—In the fifth year of king Richard II. A. D. 1381, a collector of the poll tax, which was payable by every one above the age of ſixteen years, took a very unwarrantable and indecent method of aſcertaining whether the daughter of this Tyler were liable to the tax. The father upon his return home, undertook to execute ſummary juſtice upon the collector for the indignity offered to his daughter, and murthered him with his lathing hammer. He was applauded and ſupported by

Wat Tyler the protomartyr of levellers in England.

Cauſe of Wat Tyler's rebellion.

by ſome malcontents of the day; and from thence broke out the open rebellion, of which Speed gives the following account.

* " Not long after the time of that Earles imployment into *Spaine*, there fell out accidents, which doe plainely conuince their error to be great, who thinke that any madneſſe is like that of an armed and ungouerned multitude, whereof theſe times (by a kind of fate proper to childrens raigne) gaue a moſt dangerous document. The extreame hatred borne by the people to *John* Duke of *Lancaſter*, calling himſelfe king of *Caſtile* and *Leon*, and the diſcontentment taken at an extraordinary taxe, leuied *per pol* upon all ſorts of people, who were aboue ſixteene yeers of age, which (as all other the euils of the time) they imputed to the duke (the manner being to count them the authors of euils, who are ſuppoſed to haue the greateſt power of doing them) mooued the enraged multitudes upon ſlight and ſmall beginnings to runne together in ſo fearefull a torrent, that it ſeemed the king and kingdome were ſodainely falne under their moſt wicked fury. There were in this moſt rebellious inſurrection, the commons and bond-men (who aſpiring by force to a

Diſcontent at the Duke of Lancaſter, and at the poll tax.

* Speed's Chronicle, c. xiii. Mon. 50. p. 733, & ſeq.

free

free manumiſſion) principally thoſe of *Kent* and *Eſſex*, whoſe example was followed in the neighbourſhires of *Surrey*, *Suffolke*, *Norfolke*, *Cambridge*, and other places, by incredible heards and droues of like qualified people, who (ſpecially in *Norfolke*) forced ſundry principall gentlemen to attend them in their madding.

The rebels maſters of London.

" They of *Kent* embattelled themſelues under two banners of *St. George*, and about threeſcore and tenne perſons upon *Blackheath* by *Greenwich*, and from thence came to *London*, where the generality of people inclining to them, they are maſters. The priory of *St. John*'s without *Smithfield* they kept burning for about ſeauen daies, and the goodly palace of the *Sauoy* belonging to the duke, with all the riches therein they conſumed by fire in a kinde of holy outrage, for they threw one of their fellowes into the flame, who had thruſt a piece of ſtolne plate into his boſome. The rebels of *Eſſex* came to *Lambeth*, burnt all the archbiſhop's goods, and defaced all the writings, rowles, records, and monuments of the *Chancerie*, as hauing a ſpeciall hatred to the lawyers, little to their diſgrace, for that they ſhared herein with good men alſo, whom they hated. But their deſperate wickedneſſe extended itſelfe beyond the

The archbiſhop of Canterbury's records, and thoſe of Chancery, burnt.

the ſpoyle of houſes and ſubſtance, laying bloudy hands upon the moſt eminent and worthy men in the kingdome, for that they had diſſwaded the king to put himſelfe into their hands at *Greenwich*, where he talked with them out of his barge, and thereby had their maine deſigne diſappointed. *Simon Tibald* archbiſhoppe of *Canterburie* and chancellour of *England*, a right worthy prelate, and *Sir Robert Hales*, a knight of high courage lord prior of *St. Johns*, and treaſurer of *England* with others they without reſpect to the majeſty of the king, or priuilege of their moſt honourable dignities, moſt barbarouſly murthered by beheading them upon *Tower Hill*, among infernall ſhoutes, and diuelliſh yels. For the *Tower* itſelfe (from whence they had haled them, the young king being there in perſon) was open to their execrable inſolencies. Neither doth the authority of *Polydore Virgil* affirming, that they were not haled forth, but onely ſtayed by the rebels, to whom (hee ſaith they were ſent) induce us rather to credite him, than authours liuing about thoſe very times. There was no little ſtore of other innocent bloud ſhed by them in theſe tumults. Nor was the king's owne perſon without manifeſt perill, againſt whoſe life they

They murder the archbiſhop of Canterbury, and treaſurer.

they had damnably conſpired. It were long to reckon up the kindes of ſuch villainies, as they wrought, but endleſſe to recount the particulars. The common annals ſet forth this whole tragicall buſineſſe very diligently.

" They had many captaines of miſchiefe, but two principall, *Wat Tyler* of *Maidſtone* in *Kent*, (whom *Walſingham* pretily cals the *Idoll of Clownes*,) and *Jacke Straw*, who together had followers to the number (as they were eſtimated) of about one hundreth thouſand; and at one ſermon made to them by John Ball, *Walſingham* ſaith, there were about twiſe as many. Their petitions were full of pride and malice, but eaſily graunted by the king, the neceſſity of the times extorting them. They had a chaplaine as graceleſſe as themſelues, one *John Ball*, an excommunicated prieſt, who with his wicked doctrine nouriſhed in them their ſeditious furies, to his own juſt deſtruction in the end; but when a great multitude accepting the king's mercy were gone, *Wat Tyler* and his campe departed not, but upon pretence of diſliking the articles of peace, ſought to winne time, till he might put into full execution his incredible treaſon, which (as *Jacke Straw* at the time of his execution confeſſed) were upon that very night of the day, wherein *Wat Tyler*

Spirited by the preaching of John Ball.

Jack Straw's confeſſion that Wat Tyler meant to have murthered the king.

was ſlaine, to murder the king, and chiefe men, and to erect pettie tyrannies to themſelues in every ſhire; and already one *John Littiſtar* a dyer in *Norwich* had taken upon him at *Northwalſham* in *Norfolke* the name of the king of the commons, and *Robert Weſtbroome*, in *Suffolke*, to whom *John Wraw* another lew'd prieſt had aſſigned it.

" Neuer was the kingly race, and commonweale ſo near to an utter extirpation, as at this preſent, which was (wee may truely ſay) miraculouſly preuented. The yong king in theſe feares and dangers repairing to *Weſtminſter*, moſt deuoutly commended his crowne, life, and whole eſtate to God, nor that in vaine. For *Wat Tyler* with his campe of raſcals eſteemed to be ten or twenty thouſand, (according to the king's proclamation attending in *Smithfield*, but cauilling of purpoſe upon the conditions of peace, as hee, that meant a further miſchiefe, though they of *Eſſex* were returned) was entreated to ride to the king, who alſo ſate on horſe-backe before Saint *Bartholmewes*, in whoſe company was that renouned Lord Mayor of *London William Walworth* with many other men of birth and place."

Wat Tyler meets the king in Smithfield.

" *Wat Tyler* ſcarſe at the laſt coming, behaved himſelfe ſo inſolently, offering to murther

Killed by the lord mayor.

ther one of the king's knights, Sir *John Newton*, for omiſſion of ſome *punto* of reſpect, which he arrogated to himſelfe, in more than a kingly manner, was (upon leaue given by the king) boldly arreſted with a drawn weapon by the lord maior, a man (ſay writers) of incomparable courage, which blow was ſeconded by the ſaid lord, and others, ſo ſpeedily, that there this prodigie of a traitour was feld and ſlaine. A death too worthy, for that he dyed by the ſwords of honourable perſons, for whom the axe of an hangman had beene far too good.

" The commons perceiving the fall of their captaine prepared to uſe extreme revenge, when the moſt hopefull yong king, with a preſent wit and courage (it being for his life and kingdome) ſpurred foorth his horſe, and bad them follow him, without being grieued for the loſſe of a ribauld and traitour, for now hee himſelfe would be their captaine. Hereupon they thronged after him into the field, there to haue whatſoeur they deſired. But the moſt worthy of all *Londoners Walworth*, ſpeedes with one man onely into the citty, raiſeth a thouſand citizens in armour, brings them (being led in good array by *Sir Robert Knolles*, and others) with *Wat Tyler*'s head (which the lord maior had commanded to

The young king headed the rebels who followed him.

bee chopt off from his dead carkaſe) borne before him upon a ſpeare to the king: that very head, the curſed tongue whereof had dared to ſay, *That all the laws of England ſhould come out of his mouth.*

The rebels ſubmit and beg their lives.

" This act reſtored the crowne, (as it were) and realme to king *Richard*, for the rebels ſeeing themſelues girt in with armed men, partly fled, partly fell upon their knees, and (throwing away all hope in weapon) they anſwerably to their baſeneſſe, begged their liues, who but euen now reputed themſelues maſters of the field, and of the king; and albeit there was a generall deſire in the hearts of loyall men to expiate ſo many villanies with the bloud of the actors, yet things abroad in the realme being as yet unſettled, they had a generall charter of pardon ſealed, and were ſo ſent home into their countries."

Firſt levelling ſermons preached in this country by John Straw.

It is to be further obſerved, by way of drawing cloſer the compariſon of ſome latter performances and attempts, with this firſt exhibition upon our ſtage, that,* " as the rebels marched to London, they ſet all the priſoners at liberty, of which number was John Straw, a prieſt of Maidſtone, who ex-

* Acta Regia, notes to p. 187.

aſperated

aſperated the people againſt their ſuperiors by his levelling ſermons wherever he came, that as all were the ſons of Adam, there ought to be no diſtinction or ſuperiority; and that all things ought to be equally ſhared in common*. He (Wat Tyler) was ſo inſolent, that he told the knight, whom the king ſent to deſire a conference with him, that he would come when he thought fit; and when he ſet out, he marched with ſuch lingering ſtate, that the king ſending the ſame knight a ſecond time to haſten him, the commiſſion had like to have coſt him his life; and when he arrived in *Smithfield*, the ſame knight was like to be ſacrificed, becauſe he delivered him his meſſage from the king without alighting from his horſe; which ſo provoked the imperious *Tyler*, that he was going to run him through, if the king had not ſtepped forwards, and called out to his knight to diſmount.

" He demanded in ſubſtance, that all the old laws ſhould be aboliſhed, and the form of government altered according to his own fantaſtical ſchemes; and that all warrens, The demands of theſe ancient levellers.

* John Ball encouraged the levellers by the following lines:

" When Adam delve and Eve ſpan,
" Who was then the gentleman?"

parks, and chaces ſhould be made common, and free for the poor, as well as the rich, to fiſh, fowl, hunt, and the like."

John Wickliffe gave riſe in part to this rebellion.

The next public exhibition of conſequence, which I find to have been attempted by the levellers, or malcontents of the day originated from John Wickliffe, the parſon of Lutterworth, in Leiceſterſhire. This like moſt other ſubſequent eſſays of the ſame nature, was attempted to be veiled or cloaked under the ſpecious and impoſing form or cry of religion. I ſhall conſider theſe doctrines merely in a *civil* light, leaving the polemical ſolution of their theological differences from the eſtabliſhed religion to the conſcience and judgment of every individual, or of ſuch divines, as they may chuſe for their own directors. I ſpeak of Wickliffe and his levelling and anarchical doctrine, after the rebellion of Tyler and Straw, becauſe the government had not then experienced any public attempts or miſchiefs from his followers, though I think it highly probable, that the propagation of his principles did produce the moſt conſiderable ſhare of this very rebellion; for John Wickliffe began to preach his doctrines about the year of our Lord 1371, about ten years before that rebellion broke out. And it appears clear, that he was ſuſpected

pected to have been concerned with these rebels, from his being summoned and examined in the bishop's court upon his doctrines, in the very year, in which the rebellion happened. Of which examination Mr. Fox speaks thus: * "Wickliffe being beset with troubles was forced once again to make confession of his doctrine, in which confession, as occasion served, for to avoid the rigor of things, he answered with intricate words, &c. A. D. 1381." And (p. 91.) he intimates, that Wickliffe often recanted, &c. "And now again I do revoke and make recantation, &c." By means whereof Mr. Fox expressly says, "Wickliffe wooned himself out of the bishops snares." And in order to keep himself out of them in future, he went into Bohemia, where he signalized himself not a little in fomenting disturbances against that state; but it appears unquestionable, that he made either a sincere or a mock recantation, which was accepted; for after five years absence he returned to England, and died peaceably at his parsonage house at Lutterworth, on the last day of December 1387.

Wickliffe suspected of being concerned in the rebellion.

John Wickliffe besides many singular doctrines of a mere *spiritual* nature, which

Wickliffe's seditious doctrines.

* Fox, Act. Mon. p. 95. a fine.

it is not my province to examine, held * "that if a biſhop or prieſt be in deadly ſynne, he doth not order, conſecrate, nor baptize; † that eccleſiaſtical miniſters ſhould not have any temporal poſſeſſions, nor property in any thing, but ſhould begge. ‡ He condemned lawful oaths, ſavouring therein, ſaith Oſiander, of anabaptiſm. He alſo taught that all things come to paſs by abſolute neceſſity." And laſtly, he held, as Melanchton termed it, a ſeditious doctrine, and mother of rebellion; § "That there is no civil magiſtrates whilſt he is in mortal ſin, and that the people may at their pleaſure correct princes, when they offend." And according to this principle, Mr. Stow informs us, ‖ "The favourers of Wickliffe's doctrine did nayle up ſchedules upon the church dores of London, conteyning, that there was a hundreth thouſand men ready to ryſe againſt all ſuch, as could not away with (i. e. follow) their ſect."

Uſed to foment rebellion.

* Acts & Mon. p. 96. a. Art. 4. b. Art. 15. & Oſiander Epit. Hiſt. Ecc. Cent. 9, 10, 11. p. 452. Art. 4.

† Acts & Mon. p. 96. & 93. Art. 12. & Oſiander, ubi ſupra, p. 458. Art. 36.

‡ Oſiander, ubi ſupra, p. 459. Art. 43.

§ Oſiander in Ep. Cent. 9, 10. 11, &c. p. 455. Art. 17.

‖ Stowe's Annal. &c. p. 550. poſt med.

Of these opinions there could but be one true judgment, which Melanchton seems to have very justly expressed. * *De domino civili sophistice planè & seditiosè rixatur*; he squabbles about the civil magistrate clearly in a very sophistical and seditious manner. And † *insaniit Wicklevus, qui sensit impios nullum dominium habere*; Wickliffe was mad when he thought, that wicked men could have no property nor power. And lastly, not to tire my readers with redundant quotations, † *Miras tragedias excitavit Wicklevus, qui contendit eos, qui non habent spiritum sanctum amittere dominium, & colligit multas sophisticas rationes ad confirmandum hoc dogma, &c.*; Wickliffe occasioned wonderful tragedies by holding, that those, who were not possessed of the holy ghost (i. e. who were not in the state of grace) lost all right to property or power, and he collects many sophistical arguments to confirm his opinion.

Melanchton's opinions of Wickliffe's doctrines.

Few accounts are, I believe, more variously reported by English historians, than the history of Sir John Oldcastle, who was

Sir John Oldcastle's history often misrepresented.

* Mel. en Ep. ad Fred. Micon. in lib. Epistol. Zuinglii & Ecolampad. p. 622. and Osiand. in Epit. Hist. Eccl. Cent. 9, 10, 11, 12. p. 454. Art. 15. & Conc. Const. Sess. 8. Art. 15.

† Barrington's Observations on the Ancient Statutes, p. 347.

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Few accounts are, I believe, more variouſly reported by Engliſh hiſtorians, than the hiſtory of Sir John Oldcaſtle, who was

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† Barrington's Obſervations on the Ancient Statutes, p. 347.

the great patron, ſupporter, and the martyr of the Wickliffites, or, as they were in thoſe days generally called the Lollards. Few authors ſince the reformation give credit to the chroniclers of thoſe times, who being generally monks * are ſuſpected of partiality. There are however ſufficient facts allowed by all hiſtorians for us to form an undoubted and unbiaſſed judgment upon the real cauſe of his death; and Mr. Stowe, who dedicated his work to the archbiſhop of Canterbury ſince the reformation, barring his perſonal impartiality and credit as an hiſtorian, appears from this circumſtance to command the belief of all parties, when he ſpeaks of Sir John Oldcaſtle.

After the relation of the rebellion raiſed by him and his men in St. Giles's Field, and how many were put to death for the ſame, he informs us, that Sir John Oldcaſtle eſcaped out of priſon and lived abroad as an outlaw for four or five years, and after that, † "moleſting a great part of England with riding, roving, and ſpoylinge in the abſence of *K. Henry*, that was accupied in warres beyond the ſeas. Whilſt theſe things were in

Sir John Oldcaſtle's treaſonable practices in England.

* Vid. Barrington's Obſervations on the Ancient Statutes, p. 347.

† Stowe's An. 5 H. V. p. 570, & ſeq.

doing

doing (beyond the ſea) by the king, the fauourers of *Syr John Oldcaſtle* beganne to rage in England, who with great profers and promiſes of money ſtyrred up the Scotts to invade the realme in the king's abſence, affirminge the ſame would be eaſily wonne. And it was ſaid, that *Syr John Oldcaſtle* talked with *William (Douglaſs)* the Scott, at *Pomfrett*, promiſing him a great ſumme of money to perſuade the people to come with him, and to bringe with him him, who was falſely called *K. Richard* the II. and to ſet him up as king. Alſo indentures and other wrytings were found, made betwixt *Syr John Oldcaſtle* and the *Duke* of *Albany* in Scotland, wherein the Scotts were inuited to beſeege *Rookeſborow* and *Barwicke*, &c.

Sir John Oldcaſtle taken priſoner.

" Towards the end of the yeare 1417 *Syr John Oldcaſtle* was taken by chance in the territory of the *Lord Poweſſe* neere the borders of *Wales*, not without danger and hurt of ſome, that tooke him; neyther could he himſelfe be taken before he was wounded. He was brought up to *London* in a litter wounded during the parliament, and there examined. As ſoone as *Syr John Oldcaſtle* was brought into the parliament before the king's brother, the duke of Bedford, regent and gouernour of the realme, and the other

ſtates, his indightment was read before him, of his forcible inſurrection againſt the king in *Saint Gyles Field*, and other treaſons by him committed. The queſtion was aſked, how he would excuſe himſelfe, and ſhew why he ſhould not be deemed to dy? But he ſeeking other talke, began to preach of the mercyes of God, and that all mortall men, that would be followers of God ought to preferre mercy aboue judgment. And that *vengeance perteyned only to the Lord, and ought not to be practiſed by them, that worſhipped God, but to be left to God alone.* With many other words to detract tyme, untill the cheefe juſtice admoniſhed the *regent* not to ſuffer him to ſpend the tyme ſo vaynely, &c. But he againe began to talke nothing to the purpoſe, untill the cheefe juſtice commaunded him to anſwere finally, why he ſhould not ſuffer death. To which he ſtoutly anſwered, that he had no judge among them, ſo long as his liege lord *K. Richard* was aliue, and in the realme of Scotland. Which anſwere when he had made, becauſe there needed no further witneſſe, he was condemned to be drawne and hanged upon a gallowes, and to be burned hanging upon the ſame. Which judgment was executed on him on the 14th of December, in *Saint Gyles Field*. Where many honorable

Queſtioned in parliament upon his treaſon.

Condemned as a traitor.

honorable persons being present, the last words, that he spake were to *Syr Thomas Erpingham*, adjuringe him, that if he saw him rise from death to life againe the third day, he would procure that his sect might be in peace and quiett."

It cannot certainly appear strange, that Sir John Oldcastle holding the doctrines I have before mentioned, should act in a seditious and treasonable manner towards his sovereign. I forbear to mention many instances of such attempts, which are related by cotemporary authors, for the reason I have before alluded to. No doubt nor question can however be raised against the authenticity of the record; for if it were not perfectly authentic, it may be fairly concluded, that (particularly considering its tendency) Sir Robert Cotton would not have included it in his collection, nor would Mr. Prynne, that still more noted republican, have published it in his abridgment of these records of the tower. * " On Tuesday the 18th of *December*, and the 29th day of this parliament, *Sir John Oldcastle*, of *Cowling*, in the county of *Kent* knight being outlawed upon treason in the King's Bench, and excom-

Record for his execution for high treason.

* Cot. Abridgment of the Records of the Towerr revised, &c. by William Prynne, 5 H. VI. p. 553, 554.

municated

municated before the archbiſhop of *Canterbury* for hereſies, was brought before the lords, and having heard his ſaid conviction, anſwered not thereto in excuſe; upon which record and proceſſe it was adjudged, that he ſhould be taken as a traitor to the king and realm; that he ſhould be carried to the tower of *London*, and from thence drawn through *London* to the new gallows in *St. Gyles*, without Temple-barr, and there to be hanged and burned hanging. The record out of the King's Bench is at large, the effect whereof is, that the ſaid *Sir John Oldcaſtle*, and others, to the number of twenty men, called *Lollards*, at *St. Gyles* aforeſaid, did conſpire to ſubvert the ſtate of the clergy, and to kill the king, his brother, and other nobles. The archbiſhop of *Canterburies* inſtrument for his excommunication is there alſo at large."

It is to be collected from facts, that notwithſtanding the ſeverity and rigour of thoſe times, which even produced the infamous ſtatute *de heretico comburendo* (afterwards repealed by the 29th of Car. II.) our anceſtors proceeded capitally againſt Sir John Oldcaſtle (ſometimes called Lord Cobham, on account of his being in right of his wife the lord of the manor of Cobham) and his aſſociates, not for their ſpeculative errors in faith,

faith, which they adjudged hereſies, but for their ſeditious and treaſonable practices againſt the ſtate. For though they made hereſy capitally criminal, they did not make it treaſon. So whether John Wickliffe himſelf had art enough to elude the rigorous juriſdiction of his day, or by a prevaricating recantation of his doctrines, diſarmed the ſeverity of the laws, true it is what Mr. Fox ſays of him. * "This martyr was never put to death, nor yet ſo much as impriſoned for his religion, but died in his bed at his benefice of Lutterworth, in Leiceſterſhire, upon the yeare heere noted." But the nature of his doctrines, more than the example of the teacher, produced after his death the moſt fatal diſaſters to the ſtate. Beſides the rebellion of Sir John Oldcaſtle and his adherents in our own country, when John Wickliffe was in Bohemia, he made a proſelyte of the noted John Huſs, and he with his colleague Hierom of Prague, ſo firmly rivetted theſe ſeditious doctrines of their maſter John Wickliffe in their followers, that for upwards of twenty years together they carried on with an army of forty thouſand men a rebellious war againſt their lawful ſovereign,

John Huſs, a diſciple of Wickliffe, in open rebellion againſt his lawful ſovereign the emperor.

* Fox's Calendar, 2 January, 1387, *John Wickliffe, Preacher, Martyr.*

and

and that the moſt bloody, cruel, and inhuman war, that ever diſgraced any nation. *So very inveterate* was their general Ziſca againſt the emperor, his lawful ſovereign, that when he died he directed his ſkin to be properly dreſſed for covering a drum, that ſhould beat up his followers for ever againſt their imperial ſovereign.

Anti-baſilican ſchool of Geneva.

The next ſet of ſyſtematic levellers, who have deluged this unfortunate iſland with blood, and ſtained it with inexpiable infamy, appear to have imbibed their levelling principles from the *antibaſilican* ſchool of Geneva. It will be proper to examine the poiſonous ſcyon, before it be engrafted upon a Britiſh ſtock; thus will the fruit be ſurely known.

When ignorance has blunted, or artifice has inveigled, or malice has ſeduced the mind and heart, the moſt general propoſitions from the higheſt authority are the conſtant weapons both of defence and offence; the ſcriptures become tortured into all imaginable ſhapes like a pliant garment, that every one thinks purpoſely fitted to himſelf. For when religion is made the cloak for covering intereſt, pleaſure, or ambition, the holy ſcripture will always ſupply the venerable materials, of which it will be made up. I am

Fallacious practice of applying the ſcriptures.

aware,

aware, that the application of the ſame text or poſition even by the ſame perſon at different times, and under different circumſtances, may in its tendency and effect, go the whole extent of the difference between loyalty and treaſon. I ſhall not therefore attempt to affix a determined ſenſe, intention, and application of treaſon to any general abſtract propoſition; but I cannot help conſidering ſome poſitions or doctrines in the whole context of circumſtance, time, and perſon, as the cauſes of the effects, which I lay before my readers. It is a metaphyſical truth, that an effect cannot exiſt without a cauſe; and it is a moral truth, that every cauſe of every effect cannot be always known to every perſon. Suffice it for the object of my illuſtration, that the theory I lay down be likely to have produced the practices I diſcloſe. I aim not at ingenuity in affixing a treaſonable import to an innocent propoſition, nor do I affect the latitudinarian liberality of acquitting every doctrine of ſedition and diſloyalty. Conſtructive treaſons are little congenial with the ſpirit of the Britiſh conſtitution.

Conſtructive treaſon unconſtitutional.

It becomes a ſerious obligation upon government to be unuſually vigilant over the actions of thoſe, who delight or glory in principles and doctrines, that appear innoxious, but

but by the laboured efforts of conſtructive lenity. The openneſs of loyalty is as eſſentially free from ambiguity and uncertainty, as the deſigns and ſpirit of the traitor are perplexed with doubt, and maſked with plauſibility. Neither rule nor inſtruction can be ſettled for the ſure interpretation of abſtract and general poſitions. The moſt conſtitutional paſſages from Bracton and Forteſcue might admit of a very ſeditious and diſloyal conſtruction if tranſplanted into Buchannan or Milton, and the moſt exceptionable propoſitions from the latter might wear every appearance of truth and loyalty in the works of the former.

Loyalty open and candid, treaſon dark and uncertain.

Zuinglius levelling doctrines.

Zuinglius may be properly called the father of this levelling ſeminary of Geneva, * "*Reges* (ſaith he) *quando perfidè, & extra regulam Chriſti egerint, poſſunt cum Deo deponi, &c.*; kings may be depoſed where they advance ungodlineſs. † *Permittendum* (ſaith he) *eſt Cæſari officium debitum*; we muſt ſuffer ourſelves to pay a duty to *Cæſar*; but upon this condition, *ſi modo fidem nobis permittat illibatam*; *ſi nos illud negligentes patimur, neglectæ religionis rei erimus*; if he will ſuffer us to enjoy our own religion, as we

* Philanax Anglicus, p. 3. & ſeq.

† Lib. iv. p. 868.

will

will have it; otherwiſe, if we ſhould be ſo negligent as to ſuffer him, we ſhall be guilty of abandoning religion itſelf. Thus they will be pleaſed to obey Cæſar, if Cæſar will be adviſed and directed by them; otherwiſe they have another courſe to take with him, they will talk with him to the purpoſe; but yet he will explain his meaning further, and more fully to us in his epiſtle *Ad Ulmenſes*, whom he admoniſheth, *Ut coram auditoribus ſuis ſenſim incipiant detrahere perſonam imperio Romano, quomodo ſtultum ſit agnoſcere hoc imperium in Germaniâ, quod non agnoſcitur Romæ, undè nomen habet:* and again, *Nimis amantes eſtis rei Romanæ; quid Germaniæ cum Roma? Sed prudenter & paulatim agenda ſunt hujusmodi, atque cum paucis, quibus credere poſſis, &c.*; that they ſhould by little and little, in their congregations, unmaſk the uſurpation of the *Roman* Empire, and ſhew them how ridiculous a thing it is to acknowledge that empire in *Germany*, which is not acknowledged at *Rome* itſelf, from whence it hath its denomination. He tells them further, that they ought not to be ſo fond of the *Roman* government—what had *Germany* to do with *Rome?* But yet this kinde of doctrine muſt be inſtilled by degrees, and the buſineſs cunningly carried before a few firſt, that may be

Subverſive of their lawful government.

truſted, &c. Who is now ſo blinde as not to ſee how this wicked Swiſs labors to undermine all monarchy, and to blow up the *Roman* Empire with his breath! And how craftily the buſineſs muſt be carried, *ſenſim & paulatim*, not openly and plainly, nor all at once; no, by no means; *et coram auditoribus*, pure doctrine for a pulpit, a moſt rare ſermon to the people, who are moſt likely to applaud it.

Their doctrines upon ſtate points, not upon faith, to be examined.

" Their ſchool points and doctrines of faith I ſhall leave to the examination of the more learned, intending only to deliver to the world their doctrines, problems, and paradoxes in points of ſtate, and to demonſtrate to the world how much their refined reformation doth derogate from the royalty and ſoveraign authority of Chriſtian kings and princes, and how much it is more favorable to democracy and popular government, as more conſonant to their conſiſtory and elderſhip, whereby they have wrought ſuch horrid confuſions over the face of Chriſtendom, and yet truly we may finde *Calvin* go as ſlily and conſiderately to work as the other, and by certain degrees too, nor altogether ſo bluntly as the rude *Swiſs* before him did. Firſt he goes about to commend ariſtocracy, and labors to abuſe monarchy to the

the height, and all that to prefer the reputation of his conſiſtory and ſanhedrim, as you ſhall hear him ſpeak for himſelf in his artificial inſtitutions, * *Non id quidem per ſe, ſed hominum vitio.* Mark his cunning; not that ariſtocracy were naturally, and of itſelf, better (nó, by no means, things were not ripe for that yet) but through the vices and deficiencies of men; why this one would think to be pretty plauſible; but mark his reaſon, *Quod rariſſime contingit reges ſibi moderari, deinde tanto acumine & prudentiâ inſtructos eſſe, ut unuſquiſque videat quantum ſatis eſt.* So he makes it very rare and dainty to finde a wiſe and temperate prince, or almoſt impoſſible for a king to ſee ſufficiently into his affairs; and therefore concludes, *Facit ergo hominum defectus, ut tutius ſit ac magis tolerabile, plures tenere gubernacula.* So his reaſon proceeds upon the defects of princes, and maintains it to be more ſafe and tolerable for many joyntly, than for one abſolutely to govern and command; and concludes with an ingenuous confeſſion, *Atque ut libenter fatear, nullum eſſe gubernationis genus iſto felicius*; that no kinde of government can be happier than that; now the effects of that

Calvin's anti-monarchical principles.

* Calv. Inſt. b. iv. c. 20. v. 10.

doctrine do moſt plainly appear by that popular ſtate, yet governed *ariſtocraticè*, as *Bodin* very well obſerves, eſtabliſhed by him in the city of *Geneva*, after the ejection of the biſhop, who was their lawful prince, as his predeceſſors had long before him there enjoyed it, ſince *Frederick* the Firſt. So thoſe were the firſt fair fruits of the propagation of his goſpel there.

" Now after all this, to prevent that any man ſhould object, that princes have always grave and wiſe counſellors about them to adviſe with, and to inſpire them; and if they ſhould be ſo weak themſelves, as he imagines them to be, yet ſo their defects might be ſupplied, he gives this reſolution in his comment upon *Daniel*, * *Kings* (ſaith he) *make choice of ſuch men for their counſellors, as can beſt fit their humours, and accommodate themſelves beſt to ſerve their beſtial luſts and appetites*, inſtancing particularly in *cruelty*, *fraud*, and *rapine*. So he makes kings rather worſe, than better for having counſellors, and conſequently ſtaineth the honor and credit of a counſellor with a ſcandal and blemiſh intolerable.

" And yet a little further upon the ſame book

* Cap. iv. v. 26.

of

of Daniel, * *They are* (ſaith he) *ſtrangely out of their wits, quite void of ſenſe and all underſtanding, who deſire to live in ſoveraign monarchies; for it cannot be, but that order and policy ſhould decay, where one man holds ſo large an extent of dominion.* Nay, to make this impious propoſition ſeem good, he addes in the ſame book thus † *Kings* (ſaith he) *forget that they are men, that is, of the ſame mould that others are: they are called kings and dukes,* Dei gratiâ; *to what end ſerve theſe words? To ſhew by their title, that they acknowledge no other ſuperior; and yet they will tread upon God with their feet under that cloak: ſo it is but a meer abuſe and blinde to diſguiſe and conceal their wicked deſigns, when they vaunt, that they reign Dei gratiâ.* Is not this a moſt excellent doctrine to be preached in a monarchy? and a very fine deſcant upon *Dei gratiâ?*

" Yet he goeth a little further in the ſame book, ‡ *Kings* (ſaith he) *make their boaſt, that they reign Dei gratiâ, yet they indeed deſpiſe the majeſty of God; voila quelle eſt la rage & forcenerve de tous Roys;* that is to ſay, *Obſerve here the rage, fury, and phrenſie,* of all kings, none excepted; and to make that

* Cap. ii. v. 39. † Cap. v. v. 25.
‡ Cap. v. v. 21.

good, he addeth this ſtrength to it. *It is common and ordinary to all kings, to exclude God from the government of the world.* May we not here truly ſay of him, and the reſt of his reforming brethren, *Pluſquam regnare videntur, quibus ita licet cenſuram agere regnantium.* They are ſure more than kings, who thus imperiouſly dare paſs their cenſures upon kings.

" But yet if you have a minde to hear *John Calvin* preach more like a *Switzer*, ſee what he ſays further upon the ſame book of *Daniel.* * *Darius* (ſaith he) *will by his example condemn all thoſe, who at this day profeſs themſelves either catholick kings, or Chriſtian kings, or defenders of the faith, and yet not onely do they deface and bury all true piety and religion, but they corrupt and deprave the whole worſhip of God.* This is not yet all neither; for in the ſame chapter he is bold to touch kings a little more to the quick, and curiouſly deſcribes what kinde of beaſts they are generally; † *Les Roys ſont preſque tous hebetez & brutaux, auſſi ſemblablement ſont ils coment les chevaux & les aſnes de beſtes brutes*; kings are for the moſt part ſtupid and brutiſh, nor liker any brutes upon the earth, than hack-

* Cap. vi. v. 25. † Cap. vi. v. 3, 4.

ney

ney jades and aſſes. Fitting titles for the majeſty of God's anointed. At length to crown all, that he hath ſaid or done in this point, he turns his tune to ſharpes and menaces in this brave manner: * *Abdicant ſe poteſtate terreni principes, dum inſurgunt contra Deum, imo indigni ſunt qui cenſeantur in hominum numero: potius ergo conſpuere oportet in illorum capita, quam illis parere, ubi ſic proterviunt, ut velint ſpoliare Deum ſuo jure*; earthly princes (ſaith he) deveſt themſelves of power, when they make an inſurrection againſt God; nay, they are unworthy to be reputed amongſt men; men had better therefore ſpit in their faces, then yield obedience to their commands, when they ſhall grow ſo inſolent, as to rob God of his right. Is not this a moſt rare and learned homily of obedience for ſubjects?

" Now enter the *Tibullus* of *Geneva*, ſweet M. *Theodore Beza*, and by his opinions and practices it will be more eaſily made appear, that it was his maſter *Calvin's* not onely opinion, but deſign to make all the world dance the *Geneva* jigg, and to propagate his godly government throughout all Chriſtendom; for he was both his diſciple and companion, who

Beza, Calvin's diſciple and friend.

* Cap. vi. v. 22.

ſoundly did underſtand his doctrine, and did as bravely ſecond him; ſo we know, that *noſcitur ex ſocio, &c.* But to know this gentleman in his proper humor, and *in puris naturalibus*, read but his poſitions, and catechiſm of ſedition, the practice of his piety, the book called * *Vindiciæ contra Tyrannos*, where he acts the perfect part of *Junius Brutus:* and firſt, *page* 15, he propounds this queſtion; *If ſubjects be bound to obey their kings, when they command againſt God's law?* And then, *page* 22, he reſolveth, † *we muſt obey kings for God's cauſe, when they obey God:* and then concludes, *page* 24, ‡ *As the vaſſal loſeth his fiefe, if he commit felony, ſo the king loſeth his right, and his realm alſo, if he forſake God.* But above all, the braveſt maxime he produceth, *page* 65, § *That all conſpiracies are good or ill, as the end is, at which they aim*; which is a moſt diabolical principle, and capable to maintain all the rebels and traytors in the world. Yet, *page* 66, he goes a little further, ‖ *The magiſtrates* (ſaith he) *and one part of the realm, may reſiſt the king, being an idolater*; *as* Libna *revolted from* Joram, *for*

His doctrines of kingly power.

* Vind. cont. Tyran. p. 15.
† Ibid. p. 22.
‡ Ibid. p. 24.
§ Ibid. p. 65.
‖ Ibid. p. 66.

forſaking

forſaking of God. Here he gives all rebels a *ſic dicit dominus* for their defence.

" I cannot here forget how irreverently this *Euſebius Philadelphus*, (for ſo Mr. *Theodore Beza* was pleaſed there to call himſelf) did uſe his own king *Charles* in his book, intituled, * *Reveille Martin*, where he uſually calls the king tyrant, and makes this anagram *Chaſſeur deſloyal.* Read his rimes and ſcandalous reproaches againſt the queen mother; peruſe the † forty articles recorded in that book, for the better advancement of ſeditious and rebellious government; and in the laſt of them they are obliged never to diſarm, ſo long as religion, as they call it, is purſued and proſecuted; that is, according to his meaning, ſo long as the king goes about to chaſtiſe their rebellion.

" It were too much to trouble my ingenuous reader with all thoſe holy ‡ articles of *Bearne*, 1574, coyned with Mr. *Theodore*'s own ſtamp, and communicated at *Melun*, to all the *moſches* of the *French* church, that they might the more ſtrongly, as they ſaid, make war againſt their enemies, till it pleaſed God to turn the heart of the *French* tyrant. By all this it muſt be very evident, that *Beza* and

* Reveille Martin. † Art. 40.
‡ Articles of Berne.

His rebellion againſt his lawful ſovereign.

his followers have cauſed all thoſe uproars and commotions in *France*, when he himſelf writing to *Chriſtopher Thretius*, ſpeaks his reſolution to fight it out to the very laſt: * *Ego equidem pacem nullam, niſi debellatis hoſtibus auſim ſperare*; he could hope no peace, till the enemies were quite ſubdued.

" I might here travel a great way further, and weary you with as good ſtuff out of the book † *De Jure Magiſtratus*, a bird of the ſame neſt; for if it was not *Beza*'s own, as moſt think it was, it muſt needs be *Ottoman*'s, one of his chief comrades. ‡ But Dr. *Sutcliffe* a countryman of ours, and very near of the ſame ſect, confeſſeth the book to be *Beza*'s, and ſaith, that *Beza* in his book *De Jure Magiſtratus* doth too much arm ſubjects againſt their princes, and blameth him for going about to overthrow the authority of all Chriſtian kings and magiſtrates.

Dr. Sutcliffe's condemnation of Beza's doctrines.

Baldwyn condemns Calvin's and his diſciples zeal againſt their lawful governors.

" To Dr. *Sutcliff* may be added, the judgement of that famous lawyer § *Francis Baldwin*, who had particularly converſt with *Calvin* at *Geneva* in his book called *Reſponſio altera ad Johannem Calvinum*, Paris

* Epiſt. 40. Chriſtoph. Thretio.
† Lib. de Jure Magiſtratus. ‡ Dr. Sutcliff.
§ Francis Bald. Reſp. alt. ad. Joh. Calv. *p.* 74.

1562,

1562, p. 74. *Mirabar quorſum evaderet inflammatus tuus quidem apoſtolus* (ſc. Mr. Theodorus Beza) *qui cum hic concionaretur, ſuis auditoribus vehementur commendabat extraordinarium illud exemplum Levitarum, ſtrictis gladiis per caſtra diſcurrentium, & obvios quoſque idolotras trucidantium; ſed nunc audio te, vix contentum eſſe talibus Levitis.* * And p. 128, *Leviora* (ſaith he) *ſunt illa; cum ſtatuis, ſepulchris, & oſſibus principum ac martyrum, barbarum bellum indictum videmus, cum civitates occupari, fana ſpoliari audimus*, &c. I wondered, *ſaith he*, what your fierce apoſtle meant, and whither he would (by name Mr. Theodore Beza); who, when he preached here did moſt extreamly recommend to his auditory that extraordinary example of the *Levites* running through the camp with their drawn ſwords, and killing all the idolaters they met withal; but now I hear, that you are hardly contented with ſuch moderate *Levites*, &c. And then in p. 128. Thoſe are ſmall matters *(ſaith he)* to what we hear and ſee now; a barbarous war is waged with the ſtatues, ſepulchres, and bones of kings and princes, nay and of martyrs. Cities are

* Francis Bald. Reſp. alt. ad Joh. Calv. p. 128.

ſeized

ſeized on by force, churches prophaned and ſpoiled, &c. *

"And Dr. Sutcliff adds yet further, that that book of *Vindiciæ contra Tyrannos* gives a power to ſubjects not onely to reſiſt, but to kill their kings, if they impugne God's religion, of which and all their other miſdemeanors, they muſt be the onely judges, as it is fit they ſhould be."

Origin of anabaptiſts.

By way of prelude to the levelling ſcenes exhibited in this iſland, it will not be improper to introduce to my readers that *arch leveller* Muncer with his church militant of anabaptiſts. The peculiarity of theſe ſectaries did not ſo much conſiſt in any new formula of faith or doctrines, as in an external ſhow of humility, rigor, and mortification. So † "no marvel was it to ſee them every day broach ſome new thing not heard of before; for they interpreted that reſtleſs levity to be their growing to ſpiritual perfection, and their proceeding from faith to faith."

* Had not Baldwyn written and printed theſe letters, in 1562, it might naturally have been ſuppoſed, that he was deſcribing the ſcenes acted upon our own theatre, between eighty and ninety years after that time; ſo true is it, that ſimilar cauſes produce ſimilar effects.

† Guy de Bres Erreures des Anabaptiſtes, p. 27.

"But

Their doctrines and practices.

* "But theſe men, in whoſe mouths at the firſt ſounded nothing, but mortification of the fleſh were come at the length to think, they might lawfully have their ſix or ſeven wives a piece. They, who at the firſt thought judgment and juſtice itſelf to be mercileſs cruelty; accounted at the length their own hands ſanctifyed with being imbrued in chriſtian bloud. They, who at firſt were wont to beat down all dominion, and to urge againſt poor conſtables kings of nations, had at length both conſuls and kings of their own erection amongſt themſelves. Finally, they who could not brook at firſt, that any man ſhould ſeek, no not by law the recovery of his goods injuriouſly taken, or withheld from him, were grown at the laſt to think, they could not offer unto God more acceptable ſacrifice, then by turning their adverſaries clean out of houſe and home; and by enriching themſelves with all kind of ſpoil and pillage.

Their levelling principles.

"For a further character of them, *Sleidan* tell us, that *Muncer*, by his new doctrine touching goods to be in common, incited the boores of *Franconia* and *Turingen* to undertake the holy-war (as he called it) againſt

* Dugdale's Short View of the late Troubles in England, c. i. p. 5, & ſeq.

their princes; telling them, that he was commanded of God to deſtroy all wicked princes, and ſubſtitute new ones in their places; and that they were called indeed princes, but were tyrants. Moreover, that they would not reſtore unto the people their liberty, nor permit them to have the true religion and ſervice of God; exhorting them rather to dye, then to allow their wickedneſs, and ſuffer the doctrine of the goſpel to be taken from them; and therefore to play the men, and gratify God, in deſtroying ſuch unprofitable people.

"Likewiſe, that this their great zeal towards God, and outward humility, got them in the beginning many followers; for their demands were firſt, that they might chooſe them ſuch miniſters, as ſhould preach God's word ſincerely, without any mixture of men's traditions. Secondly, That thenceforth they would pay no tythes, but of corn only; and the ſame to be diſtributed by the diſcretion of good men, partly to the miniſters of the church, partly upon the poor, and partly upon common affairs. Thirdly, That they had till that time been unworthily kept in bonds, conſidering how they were all made free in the bloud of Chriſt. Fourthly, That they refuſed not to have a magiſtrate, know-

ing

ing that he is ordained of God, and would obey him in all honeſt things; but could not abide to be any longer bound, unleſs it were ſhewed reaſonable by the teſtimony of ſcripture.* Fifthly, That in all their letters, which they wrote to provoke and allure others to their fellowſhip, they made their boaſt, that they took up arms by God's commandment, and for a certain love and zeal to the common-wealth, to the intent the doctrine of the goſpel might be ſet forth, augmented, and maintained. And ſixthly, That truth, equity, and honeſt living might reign and flouriſh; as alſo, that they might ſo provide for them and theirs, that thenceforth they ſhould not be oppreſſed with any violence.

Their ſpecious and hypocritical grounds for riſing.

" And that when they had thus at few words declared the cauſe of their enterprize, they would then command their neighbours to arm, and come unto them immediately, and help them; if not, then would they threaten to come upon them with all their force.† But having gotten the power and arms into their hands, they committed divers horrid outrages; inſomuch as *Luther* exhorted all men, that they would come to deſtroy them as wicked theeves and parricides,

Luther's judgment of the anabaptiſts of his days.

* Lb. f. 63. † Lb. f. 64. b. & 65.

in

in like caſe as they would come to quench a common fire, having moſt ſhamefully broken their faith to their princes, taken other men's goods by force, and cloak all this abomination and wickedneſs with the cover of Chriſtianity, which, ſaith he, is the vileſt and unworthieſt thing, that can be imagined.

" In *Suevia* and *Franconia*, about forty thouſand peſants took arms, robbed a great part of the nobility, plundered many towns and caſtles, *Muncer* being their chief captain; ſo that the princes of the empire, *Albert* count of *Mansfield*, *John* duke of *Saxony*, and his couſen *George Philip* the landgrave of *Heſſe*, and *Henry* duke of *Brunſwick*, were neceſſitated to raiſe what power they could; and having offered them pardon upon ſubmiſſion, and delivering up their principal leaders, which was refuſed, marcht againſt them. * But *Muncer* preparing for battel, encouraged his followers, crying out to them to take their weapons, and fight ſtoutly againſt their enemies, ſinging a ſong, whereby they called for help of the Holy Ghoſt.† The ſucceſs of which battel was, that the

Muncer defeated in open rebellion, taken, and beheaded.

* Sleidan's Com. f. 57.

† Thus did the rebels here in England at the laſt battle of Newbery, 27 Oct. 1644.

rebels

rebels at the firſt onſet were ſoon put in diſorder, and above five thouſand ſlain on the place; and that *Muncer* fled and hid himſelf; but being found and brought to the princes, was (with his fellow Phifer) beheaded at *Mulhuſe*.

"And about the year 1535, * *John* of *Leyden* (a taylor by trade and of this tribe) preaching the doctrine of *Rebaptization* ſo much infected the inferior ſort of people by the means of private conventicles, that his followers grew numerous, and exerciſed violence againſt thoſe, that were not of their ſect. At laſt robbing their adverſaries, and gathering together in great troops, they poſſeſs themſelves of the ſtrongeſt part of the city of *Munſter*, declaring, that all ſuch, as were not rebaptized ought to be accounted pagans and infidels and to be killed. His companions were *Roſman* and *Cnipperdoling*, who gathered together to that city great numbers of the baſe ſort of people, and ſeeing their ſtrength, choſe new ſenators of their own ſect, making *Cnipperdoling* the chief, † who taught, that the people might put down their magiſtrate. And albeit that

John of Leyden revives the ſect.

* An. 1535.

† Sleidan ut ſupra, lib. i. f. 131. b.

the

the apoſtles had no commandment to uſurp any juriſdiction, yet ſuch as were their miniſters of the church ought to take upon them the right of the ſword, and by force to eſtabliſh a new common-wealth. Hereupon they ſpoiled the ſuburbs, and burnt the churches; ſo that the biſhop of *Munſter* (who was lord of the city, and forced out) beſeiged them, the neighbour princes giving aſſiſtance; which ſeige continuing long, the famine grew to be ſuch, as that the beſeiged miſerably periſhed in great numbers; and at length the beſeigers forcing their entrance by aſſault, ſlew many, took the ring-leaders, and having put them to death, hanged their bodies in ſeveral cages of iron, on the higheſt towers of that city. Thus far *Sleidan.*

Roundheads. "It is not unworthy obſervation, that divers of theſe *German* phanatiques, to the end they might at that time be the better known to thoſe of their own ſect, did cut their hair round, as *Petrus Crinitus* (an author of good credit) in his book *De Bello Ruſticano*, tom. 3. p. 209. avereth; * from which example there is no doubt, but that theſe of ours took their pattern, whence they were generally called *roundheads.*

* Agmen tonſile a rotunde detonſis capitibus.

" There is an undoubted tradition, that upon the ſuppreſſing of this pernicious ſect in *Germany*, many of them fled into the *Netherlands*; and that thence two ſhips laden with ſome got into *Scotland*, where they firſt propagated their miſchievous principles; which within a ſhort time ſpreading hither have not a little endangered the utter ruine of church and ſtate: for that they ſoon after arrived here to a conſiderable increaſe." Anabaptiſts went over to Scotland.

The firſt leſſon from Geneva, which ſeems to have been practiſed in our iſland, was, * " That if kings and princes refuſed to reform religion, the inferior magiſtrates or people by direction of the miniſtry might lawfully, and ought, if need required, even by force and arms to reform it themſelves." Accordingly † " certain ‡ miniſters in Scotland with their adherents (being meer ſubjects) have taken upon them of later years, by a violent and forcible courſe to reform religion.

" In which courſe Mr. *Knox*, a man trained up in Geneva in the time of *Mary* queen of John Knox trained up in Geneva.

* Whittingham's Preface to Goodman's Book. Knox.

† Archbiſhop Bancroft's Dangerous Poſitions, c. iii. p. 10. & ſeq.

‡ Knox in his Hiſtory of the Church of Scotland, p. 213.

England, and very well inſtructed for ſuch a work, did ſhew himſelf to be a moſt ſpecial inſtrument, as it appeareth by a very ſtrange letter written by him from *Dieppe*, *Anno* * 1557; wherein he ſheweth, that his opinion and notion of that matter was not grounded only upon his own conceit, but upon the grave counſels and judgments of the moſt godly and learned, that then lived in *Europe*; (he meaneth the *Genevians*, *Calvin* and the reſt there). Upon this letter and ſome other, to and from the ſaid *Knox*, *an* † *oath of confederacy* was taken amongſt his followers in *Scotland*; and a teſtification was made of their intents by a kind of ſubſcription."

John Knox and his followers aſſume the ſovereign power.

Immediately after they preſcribed alſo ‡ "*orders* for *reformation* to be obſerved through all that whole realm *Anno* 1558; and writ § a memorable letter to the *religious* houſes, in the name of the people, that they ſhould either *remove* thence by ſuch a day, or elſe *they would then eject them by force.*

" Shortly after, (a *parliament* being there holden by the *queen regent*) they ‖ *proteſted* to the ſame, that except they had their deſire, *&c.* they would proceed in their courſe; that

* Knox, p. 213. ibid.
† Ditto, p. 217.
‡ Ditto, p. 218.
§ Ditto, p. 234.
‖ Ditto, p. 256.

neither

neither *they nor any, that joyned with them, should incurr therefore any danger in life, or lands, or other political pains; and that if any violence happened in pursuit of those matters, they should thank themselves.* Afterward the queen regent seeing all the disorder, that was then, proceeded from such of the ministers she * summoned them to have appeared at *Striveling:* which they refused to do; and were thereupon by the *queen's* commandment (as it is there termed) put to the † horn; and all men (under pain of rebellion) were inhibited to *assist* them. But this notwithstanding their friends did stick unto them: and presently after, upon a sermon to that purpose preached by Mr. Knox in ‡ S^t. *John's Town* for the overthrowing of religious houses, they fell the same day to their work, and within two days had quite destroyed § and raised in that town the houses of the *black-fryers*, of the *grey-fryers*, and *charter-house monks* down to the ground; and so they ‖ proceeded, breaking down images and altars, in *Fife*, *Angus*, *Mervis*, and other parts adjoyning.

Their resistance against the powers in being.

" This course being done, and thereupon

* Knox, p. 258. † Ditto, p. 26.
‡ Holinshed, p. 366. § Knox, p. 263.
‖ Taynne, p. 366. Buchanan.

the ſaid *queen* threatening to deſtroy St. *John's Town*, they * writ unto her, affirming, that *except ſhe ſtayed from that cruelty, they ſhould be compelled to take the ſword of juſt defence*; and *proteſted* that without the reformation, which they deſired, *they would never be ſubject to any mortal man.* Then they † writ to all their brethren to repair unto them; likewiſe to *the nobility upon pain of* ‡ *excommunication to joyn with them*; ſaying, that it was their duty to *bridle the fury and rage of wicked men, were it of princes, or emperours.* Knox, page 269.

" Upon theſe letters divers § repaired to St. *John's Town* from ſundry places; inſomuch *as when Lion Herald in his coat-armour, commanded all men under pain of treaſon to return to their houſes by publick ſound of trumpet* in Glaſcow, *never a man obeyed that charge, but went forward to their aſſociates.* They ‖ writ in like manner to the biſhops and clergy, that except they deſiſted from dealing againſt them, they would *with all force and power, execute juſt vengeans and puniſhment upon them*; *and that they would begin that ſame war, which God commanded Iſrael to execute againſt*

Their threats againſt government.

* Knox, p. 262. † Ditto, p. 268.
‡ Ditto, p. 272. § Ditto, p. 274.
‖ Ditto, p. 275.

the

the Canaanites. This manner * *of proceeding they termed to be the reſiſting of the enemy.* After (upon conditions with the *queen)* this great aſſembly at St. *John's Town* departed thence; but before the ſevering of themſelves, they entered into a † league by *oath*, that if any one member of their congregation ſhould be troubled, they ſhould all *concurr, aſſiſt, and convene again together, for the defence of the ſame.*

" Preſently after (upon a new quarrel againſt the *queen's* dealing) another concourſe was made of theſe reformers ‡ at St. *Andrews*, where, by Mr. *Knox's* perſuaſions in his ſermon, they made the like havock, that was before at St. *John's Town*, and did caſt down, ſpoil, and deſtroy both the houſes of the fryers and the abbeys in that town. So dealt they alſo within a very ſhort time with the abbey of § *Scone, the fryers at Striveling, at Lithgow, and at Endenburgh*; the *queen* || being fled thence for fear. *They kept the field* ** *two months*, and took away to themſelves *† the *coining irons* (being, as the queen alledged, *a portion of the patrimony of the*

They are in open rebellion.

* Knox, p. 276.
† Ditto, p. 283. Thynne, 367.
‡ Ditto, p. 288.
§ Ditto, p. 298, 299.
|| Ditto, p. 300.
** Ditto, p. 306.
*† Ditto, p. 308.

crown) and * *juſtified the ſame.* They † entered into a league, that though *the queen ſent for them,* they would never come to her another time *without conſent of their company.*

" After the ‡ *queen regent* made a proclamation of her deſire of peace, and that the ſtate of the realm might at the laſt be quiet; but they § confuted it, and did animate thoſe of their faction (with all their might) to be always ready, and to ſtand upon their guard. They gave the queen *the* ‖ *lye* divers times, and uſed her with moſt deſpiteful ſpeeches; and at the length they came to that boldneſs, as that they termed the *queen's* party ** a faction, and renouncing their obedience unto her, proteſted, that whoſoever ſhould take her part, *ſhould be puniſhed* as traitors, *whenſoever God ſhould put the ſword of juſtice into their hands.*

Their inſolent behaviour to their ſovereign, and renunciation of their allegiance.

" Within a while *† after they conſulted with their miniſters, eſpecially Mr. *Wilcocke* and Mr. *Knox* for the depoſing of the *queen regent* from her government, who aſſuring the reſt *that it was lawful for them ſo to do,* proceſs was made, ſentence was given, and ſhe was *‡ deprived from all regiment, by a

They depoſe the queen their ſovereign.

* Knox, p. 308. † Ditto, p. 317.
‡ Ditto, p. 300. § Ditto, p. 364.
‖ Ditto, p. 468. ** Ditto, p. 333.
*† Ditto, p. 372. *‡ Ditto, p. 378.

formal

formal act, which is ſet down in the ſame ſtory penned by Mr. *Knox*, and in ſome part printed after in *England*.

" Not long after this, the *queen regent* dieth; and then they had a *parliament* by the conſent of the *French* king, and their queen his wife. In that * *parliament* held *Anno* 1560 they reformed religion, and ſet out a *confeſſion of the Chriſtian faith*; but the ſaid king *and* † *queen denied to confirm or to ratifie the acts thereof, when they were moved thereunto*; which thing (ſaid the confederates, upon intelligence given them) *we little regarded, or yet do regard; for all, that we did was rather to ſhew our dutiful obedience, than to beg of them any ſtrength to our religion.*"

Their conduct to their new ſovereign.

As Knox and Buchanan were the principal engineers in erecting the kirk of Scotland with the hallowed materials they had brought from Geneva, ſo I ſhall expect to diſcloſe their true ſpirit more effectually by collecting from their own words the principles of their actions, than by following them through each ſcene of their edifying undertaking ‡. Some of thoſe ſanctifying precepts were

Knox and Buchanan the chief founders of the kirk.

* Knox, p. 468. † Ditto, p. 500.

‡ The preſent civil eſtabliſhment of the preſbyterian religion in Scotland is as much to be reſpected and ſubmitted to, as any other ſuch eſtabliſhment elſewhere.

were delivered as exhortatory inducements to undertake, others as juſtificative apologies for having accompliſhed the glorious work of their miſſion.

The principles of their actions.

* *Reformation* † *of religion doth belong to more than the clergy and the king.*

Noblemen ‡ *ought to reform religion, if the king will not.*

Reformation § *of religion belongeth to the commonalty.*

The commonalty, ‖ *concurring with the nobility may compel the biſhops to ceaſe from their tyranny.*

The ** *commonalty by their power may bridle the cruel beaſts (the prieſts).*

The *† *commonalty may lawfully require of their king to have true preachers; and if he be negligent, they juſtly may themſelves provide them, maintain them, defend them againſt all, that do perſecute them, and may detain the*

The majority have concurred in that form of worſhip, and the ſtate therefore has given civil ſanction unto it. The anticonſtitutional ſtate principles of Geneva, with which ſome individuals were infected, ought to be viewed ſeparately from the ſpiritual principles and doctrines upon which the preſbyterian religion is founded.

* Knox, p. 216. † Ditto, p. 216.
‡ Ditto, Appel. fol. 25.
§ Ditto, *to the commonalty*, fol. 49, 50.
‖ Ibid. fol. 47. ** Ibid. fol. 55.
*† Ibid.

profits

profits of the church-livings from the other ſort.

" *God hath* * *appointed the nobility to bridle the inordinate appetites of princes; and in ſo doing they cannot be accuſed as reſiſters of authority.*

" *It is their* † *duty to repreſs the rage and inſolency of princes.*

" *The* ‡ *nobility and commonalty ought to reform religion, and in that caſe may remove from honours, and may puniſh ſuch, as God hath condemned,* Deut. 12. (he meaneth idolaters, &c.) *of what eſtate, condition, or honour ſoever.*

" *The* ‖ *puniſhment of ſuch crimes as touch the majeſty of God, doth not appertain to kings and chief rulers only, but alſo to the whole body of the people, and to every member of the ſame, as occaſion, vocation, and ability ſhall ſerve, to revenge the injury done againſt God.*

" *The people* § *are bound by oath to God, to revenge (to the utmoſt of their power) the injury done againſt his majeſty.*

" The cruel murthering of the *archbiſhop* of

* Knox's Hiſtory, p. 343.
† Ditto Appel. fol. 33.
‡ Ditto, ditto, ditto, 28, 30.
‖ Ditto, ditto, ditto 30.
§ Ditto, ditto, ditto 35.

St.

St. Andrew's in his bed-chamber, A. D. 1545, by three private gentlemen, *becauſe* (as they told him) *he had been, and ſo remained, an obſtinate enemy to the* * *goſpel*, is ſought to be juſtified to be a godly act; and encouragement is given for others in the like caſe to commit the like outrage."

" *Penes* † *populum eſt, ut leges ferat: ſunt reges veluti tabulariorum cuſtodes. The making of laws doth belong to the people; and kings are but as keepers of the records.*

" *The people* ‡ *have the ſame power over the king, that the king hath over any one man.*

" *It were* ‖ *good that rewards were appointed by the people, for ſuch as ſhould kill tyrants; as commonly there is for thoſe, qui lupos aut urſos occiderunt, aut catulos eorum deprehenderunt*; that have killed either wolves or bears, or taken their whelps.

" *The* § *people may arraign their prince. The* *† *miniſters may excommunicate him. He that* *‡ *by excommunication is caſt into hell, is not worthy to enjoy any life upon earth.*

" When St. Paul *§ doth command us to

* Hiſtory of the Church of Scotland, p. 187.
† Ibid. p. 25. ‡ Ibid. p. 58.
‖ Ibid. p. 40. § Ibid. p. 62.
*† Ibid. p. 70. *‡ Ibid. p. 70.
*§ Buc. de jure Reg. p. 50. 55.

be

be subject and obedient to princes (*Tit.* 3) Paul *writ this in the infancy of the church. There were but few Christians then, and not many of them rich, or of ability, so as they were not ripe for such a purpose.*

" *As if* * *a man should write to such Christions as are under the Turk, in substance poor, in courage feeble, in strength unarmed, in number few, and generally subject to all kind of injuries; would he not write as Paul did? so as the apostle did respect the men he writ unto; and his words are not to be extended to the body or people of a commonwealth, or whole city.*

" *For imagine (saith* † *he) that* Paul *were now alive, where both the king and people do profess christianity, and that there were such kings, as would have their becks to stand for laws; as cared neither for God nor man; as bestowed the church revenue* scurris & balatronibus, *upon jesters and rascals, and such as gibed at those, that did embrace the more sincere religion; what would he write of such to the church? surely except he would dissent from himself, he would say, that he accounted no such for magistrates. He would forbid all men from speaking unto them, and from keeping them company; he would leave them to their subjects to be pu-*

* Buc. de jure Reg. p. 56. † Ibid. p. 56, 57.

nished;

niſhed; neither would he blame them, if they accounted no longer ſuch for their kings, as by the law of God they could have no ſociety withal."

Their unwarrantable reſiſtance againſt their lawful government.

Theſe new apoſtles exerciſed many arbitrary and tyrannical acts againſt the government then by law eſtabliſhed, and one particular inſtance ſerves to ſhew the degree of ſtrength and confidence, to which their ſelf-aſſumed power had then ariſen. An attempt had been made to diſturb the queen and her attendants at divine ſervice at Holy-rood Houſe on Sunday 24th Auguſt, 1561.

Proclamation againſt private individuals undertaking to alter the laws.

* "For remedy whereof for the time to come, an order was iſſued the next day by the lords of the council, and authorized by the queen, in which it was declared, that no manner of perſon ſhould privately or openly take in hand to alter or innovate any thing in the ſtate of religion, which the queen found publickly and univerſally received at her majeſties arrival in that realm, or attempt any thing againſt the ſame upon pain of death. But then it was required withal, that none of the leiges take in hand to trouble or moleſt any of her majeſties domeſtick ſervants, or any other perſons, which had ac-

* Heylin's Aerius Redivivus, l. iv. 166.

companied

companied her out of *France* at the time then preſent, for any cauſe whatſoever, in word, deed, or countenance; and that upon the pain of death, as the other was. But notwithſtanding the equality of ſo juſt an order, the earl of *Arrane*, in the name of the reſt of the congregation profeſſed openly on the ſame day at the croſs in *Edinborough*, *that no protection ſhould be given to the queen's domeſticks, or to any other perſon, that came out of France, either to violate the laws of the realm, or offend God's majeſty, more than was given to any other ſubjects.* And this he did, as he there affirmed, becauſe God's law had pronounced death to the idolater, and the laws of the realm had appointed puniſhment for the ſayers and hearers of maſs; from which he would have none exempted, till ſome law were publickly made in parliament, and ſuch as was agreeable to the word of God, to annul the former."

After the queen had declined or refuſed to comply with all the peremptory and unreaſonable demands contained in a very inſolent and harſh addreſs from theſe innovating apoſtles from Geneva, which went to the utter ſubverſion of the whole eccleſiaſtical eſtabliſhment of the kingdom, Knox took "* occa-

* Heylin ubi ſupra, p. 170, 171.

ſion in his preachings to the gentry of *Kyle* and *Galloway* (to which he was commiſſioned by the ſaid aſſembly) to forewarn ſome of them of the dangers, which would ſhortly follow; and thereupon earneſtly to exhort them to take ſuch order, that they might be obedient unto authority, and yet not ſuffer the enemies of God's truth to have the upper hand. And they, who underſtood his meaning at half a word, aſſembled themſelves together on the 4th of *September* at the town of *Air*, where they entered into a common bond ſubſcribed by the earl of *Glencarne*, the lords *Boyd* and *Uchiltry*, with one hundred and thirty more of note and quality, beſides the provoſt and burgeſſes of the town of *Air*, which made forty more. The tenour of which bond was this that followeth:

The covenant. "*We whoſe names are under written, do promiſe in the preſence of God, and in the preſence of his ſon our Lord Jeſus Chriſt, that we, and every one of us, ſhall and will maintain the preaching of his holy evangel, now of his mercy offered and granted to this realm; and alſo will maintain the miniſters of the ſame againſt all perſons, power, and authority, that will oppoſe themſelves to the doctrine propoſed, and by us received. And further, with the ſame ſolemnity we proteſt and promiſe, that every one of us ſhall aſſiſt*

assist another, yea, and the whole body of the protestants within this realm, in all lawful and just occasions against all persons; so that whosoever shall hurt, molest, or trouble any of our bodies, shall b reputed enemies to the whole, except that the offender will be content to submit himself to the government of the church now established amongst us. And this we do, as we desire to be accepted and favoured of the Lord Jesus, and accepted worthy of credit and honesty in the presence of the godly.

The covenanters assume to themselves the administration of justice.

And in pursuance of this bond, they seize upon some priests, and give notice to others, that they would not trouble themselves of complaining to the queen or council, but would execute the punishment appointed to idolaters in the law of God, as they saw occasion, whensoever they should be apprehended. At which the queen was much offended; but there was no remedy."

I forbear to enter into the particulars of the murders of David Rizzio, and of the king, and the other conspiracies and rebellions, which were the avowed and even boasted acts of the covenanters, out of respect to the noble families, to whom I do not attribute the slightest tincture of that fanatical enthusiasm and barbarity, which impelled some of their deluded ancestors to become actors in these disgrace-

Queen Mary driven out of her kingdom, ſeeks refuge from Elizabeth.

ful ſcenes of horror. Suffice it to ſay, that the queen was twice taken priſoner with an armed force of open rebels: compelled to reſign her kingdom to her ſon, an infant under the age of two years, and to fly for protection to queen Elizabeth. Would I could draw a veil of oblivion and expiation over the treatment this unfortunate princeſs experienced from our government. May God for ever graciouſly continue upon this nation the effects of her prayer at the hour of execution, which was, for *the full forgiveneſs of all, that were authors of her death.*

The covenanters juſtify their proceedings by the doctrine of Calvin.

* "When the Scots commiſſioners were commanded by queen *Elizabeth* to give a reaſon of their proceedings againſt that queen, they juſtified themſelves by the authority of *Calvin*; by which they did endeavour to prove (as my author hath it) *That the* popular magiſtrates *are appointed and made to moderate, and keep in order the exceſs and unruline ſs of kings; and that it was lawful for them to put the kings, that be evil and wicked, into priſon, and alſo to deprive them of their kingdoms.* Which doctrine, how it reliſhed with queen *Elizabeth*, may be judged by any, that knows with what a ſoveraign power ſhe

* Heylin's Aerius Redivivus, l. v. p. 202.

diſpoſed

diſpoſed of all things in her own dominions, without fear of rendering an account to ſuch popular magiſtrates, as *Calvin*'s doctrine might encourage to require it of her. But *Calvin* found more friends in *Scotland*, than in all the world; there being no kingdom, principality, or other eſtate, which had herein followed *Calvin*'s doctrine, in the impriſoning, depoſing, and expelling their own natural prince, till the Scots firſt led the way unto it in this ſad example."

It certainly argues a more intimate and certain knowledge of the cauſe or the antecedent to demonſtrate *à priori* the effect or conſequent, than from the effect or conſequent to demonſtrate *à poſteriori* the cauſe or antecedent. Thus muſt we give more credit to arch-biſhop Bancroft, who wrote in the year 1591 under queen Elizabeth, for his judgment of the real tendency of theſe Geneva doctrines, before their effects had been ſenſibly experienced in this country, than to Dr. Heylin and others, who had witneſſed their dire conſequences in the wounds and wretchedneſs of their afflicted country.

Bancroft's judgment of the Geneva doctrines before their effects had been experienced in this country.

* " As you have heard how Mr. *Knox*, being at *Geneva*, in queen *Mary*'s time, la-

* Bancroft Dangerous Poſitions, c. i. p. 34. & ſeq.

boured, and afterward proceeded to reform religion in *Scotland* by force and arms: ſo did ſundry *Engliſhmen*, that then lived there in like ſort, according to the *Geneva* reſolutions in that point, endeavour as much as lay in them to have kindled the like ſtirs at that time here in *England*. To which ſpecial end they did write hither ſundry letters and books wholly of this argument, *viz. That the then counſellors, the noblemen, inferior magiſtrates, and (rather than fail) the very people were bound before God to overthrow the ſuperſtition and idolatry, that was then in the land, and to reform religion, whether the queen would or no; yea, though it were by putting her to death. Out of two of theſe Engliſh* books, I have collected theſe ſeditious and conſiſtorial propoſitions following:

* "*All men, counſellors, noblemen, inferior magiſtrates, and people, are bound and charged to ſee the laws of God kept, and to ſuppreſs and reſiſt idolatry by force.*"

† *If the magiſtrates ſhall refuſe to put maſsmongers and falſe preachers to death, the people (in ſeeing it performed) do ſhew that zeal of God, which was commended in* Phinees, *de-*

* Goodman, p. 73, 74, 77.
† Ibid. p. 196.

ſtroying

ſtroying the adulterers, and in the Iſraelites *againſt the Benjamites.*"

* "*To teach, that it is not unlawful in any caſe to reſiſt the ſuperior powers, but rather to ſubmit ourſelves to puniſhment, is a dangerous doctrine; taught by ſome, by the permiſſion of God, for our ſins.*"

† "*It is not ſufficient for ſubjects not to obey wicked commandments of their princes, but to withſtand them alſo in doing the contrary, every man in his vocation and office.*"

‡ "*Sheriffs, jaylors, and other inferior officers ought not only not to caſt the ſaints of God in priſon (having commandment thereunto by the prince) for fear of loſing their officers; but to withſtand evil, to ſupport them, and to deliver them to the uttermoſt of their power.*"

§ "*If we ſee a ſheep in danger to be devoured of a wolf, we are bound to deliver it: even ſo to our power we are bound to put to our hands, to deliver the children of God, when we ſee them pitiouſly in danger by God's enemies.*"

‖ "*It is the office of counſellors to bridle the affections of princes and governors: noblemen*

* Goodman, p. 30.
† Ibid. p. 63, 43, 59, 72.
‡ Ibid. p. 87, 88, 89, 90.
§ Ibid. p. 90.
‖ Ibid. p. 33, 35.

were first ordained to bridle princes. Noblemen have their honour of the people to revenge the injuries of their kings, and not for their * *lusty hawking, nimble dicing and carding, singing and dancing, open bragging and swearing, false fleering and flattering, subtil picking and stealing, cruel polling and pilling, &c.*"

† "*Subjects do promise obedience, that the magistrate might help them; which, if he does not, they are discharged of their obedience.*"

‡ "*If magistrates without fear transgress God's laws themselves, and command others to do the like, they then have lost that honour and obedience, which otherwise their subjects did owe unto them; and ought no more to be taken for magistrates, but be examined, accused, condemned, and punished as private transgressors.*"

§ "*Judges ought, by the law of God, to summon princes before them for their crimes; and to proceed against them as against all other offenders.*"

‖ "*Evil princes ought (by the law of God) to be deposed; and inferior magistrates ought chiefly to do it.* ¶ Examples allowed of kings

* Obed. p. 107. † Goodm. p. 190. ‡ Ibid. p. 119. 139. § Obedience, p. 111. ‖ Goodm. p. ¶ Ibid. p. 110.

deposed,

deposed, Edw. II. Rich. II. *Christierne* of *Denmark*, &c."

* "*It is lawful to kill wicked kings and tyrants: and both by God's law and man's law,* † *Queen Mary ought to have been put to death, as being a tyrant, a monster, a cruel beast, &c.* Examples: ‡ *The subjects did kill the queen's highness* Athaliah; Jehu *killed the queen's majesty* Jezabel: Elias, *being no magistrate, killed the queen's majesty's chaplains,* Baal's *priests. These examples are left for our instruction. Where this justice is not executed, the state is most corrupt.*"

§ "*When magistrates do cease to do their duties* (in thus deposing or killing of princes) *the people are as it were without officers: and then God giveth the sword into their hands, and he himself is become immediately their head: for to the multitude a portion of the sword of justice is committed; from the which no person, king, queen, or emperor (being an idolater) is exempt; he must die the death. The people, in the 25th of Numbers, did hang up certain of their heads and captains; which ought to be for ever a perpetual example of their duty, in the like defection from God, to hang up such rulers, as shall*

* Obedience, p. 99. 103.
† Goodm. p. 99. ‡ Obedience, p. 113, 114, 115.
§ Goodman, p. 180, 184, 185.

draw them from him. * *If neither the inferior magiſtrates, nor the greateſt part of people, will do their offices, (in puniſhing, depoſing, or killing of princes)* † *then the miniſter muſt excommunicate ſuch a king: any miniſter may do it againſt the greateſt prince.* ‡ *God will ſend to the reſt of the people (which are willing to do their duty, but are not able) ſome Moſes or Othoniel. If they know any Jonathan, they muſt go unto him to be their captain; and he ought not to refuſe them. By the word of God (in ſuch a defection) a private* § *man (having ſome ſpecial inward motion) may kill a tyrant: as Moſes did the Egygtian; as Phinees did the Lecherous; and Ahud did king Eglon: or otherwiſe, a private man may do ſo, if he be commanded or permitted by the commonwealth.*"

First eſtabliſhment of Calviniſts at Wandſworth.

The firſt regular eſtabliſhment, after many fruitleſs attempts of any colony from this antibaſilican ſeminary in England, was made at Wandſworth on the 20th Nov. 1572; and theſe had been preceded by Cartwright's two thundering Admonitions to Parliament, in the ſecond of which he moſt ſeditiouſly libelled that high court; telling them in

* Obedience, p. 115.
† Ibid. p. 116, 118.
‡ Goodman, p. 199, 200, 201.
§ Obedience, p. 110.

plain

plain terms, * " that the ſtate did not ſhew itſelf upright, alledge the parliament what it will; that all honeſt men ſhould find lack of equity, and all good conſciences condemn that court; that it ſhould be eaſier for Sodom and Gomorrha in the day of judgment, than for ſuch a parliament; that there is no other thing to be looked for, than ſome ſpeedy vengeance to light upon the whole land; but the politic Machiavels of England provide as well as they can, though God do his worſt: and finally, that if they of that aſſembly would not follow the advice of the *Firſt Admonition*, they would infallibly be their own carvers in it; the church being bound to keep God's orders, and nothing to be called God's orders, but their preſent platform." Sir Chriſtopher Hatton was then in high favour at court, † " of a known averſeneſs to the Earl of Leiceſter, and conſequently no friend to the puritan faction. This obſtacle was to be removed one way or other, according to that principle of the ancient Donatiſts, for murthering any man, of what rank ſoever, which oppoſed their practices. This office Burchet undertakes, and undertakes the office upon this opinion, that it was lawful

Cartwright's libel upon parliament.

Murder of Captain Hawkins (inſtead of Sir Chriſtopher Hatton) by Burchet.

* Cartwright's Second Admonition.

† Heylin's Aerius Redivivus, L. vii. c. 275.

to aſſaſſinate any man who oppoſed the ghoſpel." This Burchet ſtabbed Captain Hawkins in the ſtreet, miſtaking his perſon for that of Sir Chriſtopher Hatton; and when he was confined in the Tower he alſo ſtabbed one of his keepers. He was executed on the ſpot, on which he murthered Captain Hawkins. I will not conclude, with Dr. Heylin, that this wretch was encouraged or ſet on by his brethren to this deſperate act; but nobody can deny, that the principles I have quoted from Goodman and others, are ſtrong provocatives to ſuch attempts.

* "And having thus demonſtrated, that the principles, by which this ſort of men be unhappily guided, are moſt dangerous and deſtructive to civil government, I now deſcend to thoſe their arts and devices, whereof by the help and influence of a moſt ſubtile, corrupt, and ſchiſmatical party in parliament, they made uſe, in order to the raiſing this late nefarious rebellion; the conſequence whereof, *viz.* the extirpating of monarchy here, was in their deſign long before; however it may be thought by ſome, that *neceſſity* and *deſpair* put them upon that bold

The extirpation of monarchy, the firſt leſſon of the Geneva ſchool.

* Dugdale's Short View, c. iii, p. 19.

exigent,

exigent, after they had gone farther, than they thought they could (by any outward reconciliation or pardon) be ſafe; for if need were, ſufficient and undoubted teſtimony might yet be produced, who did hear a principal * actor in this late woful tragedy, about a twelvemonth after the barbarous murther of King *Charles* the Firſt, expreſs theſe words: *I bleſs God, that I have now lived to ſee the ruine of monarchy, and that I have been inſtrumental in it; for I do here acknowledge, that it hath been in my deſign ever ſince I was at* Geneva, *which is now thirty-eight years.*"

The prevalence of the puritanical party in England and Scotland.

About the year 1640, the Geneva party both in Scotland and England, had by various means and practices ſo increaſed in numbers and ſtrength, that their reſiſtance to the eſtabliſhed government became open and ſyſtematic. In order to quiet affairs in Scotland (for theſe levellers there could never reſt under any ſort of ſpiritual or civil ſuperiority) king Charles the Firſt intimated his intention of ſummoning a general convention at Glaſcow, at which he hoped, that all church differences and other diſcontents would be amicably and finally

* Col. Purefoy, one of their council of ſtate.

ſettled:

ſettled: but all in vain; * for they had ſo contrived the matter, that none were choſen to have voices in that aſſembly, but ſuch as were ſure unto the ſide, ſuch as had formerly been under the cenſures of the church for their inconformity, and had refuſed to acknowledge the king's ſupremacy, or had declared their diſaffections to epiſcopal government. And that the biſhops might have no encouragement to ſit amongſt them, they cite them to appear as criminal perſons, libel againſt them in a ſcandalous and unchriſtian manner: and finally, make choice of *Henderſon*, a ſeditious *preſbyter*, to ſit as moderator or chief preſident in it. And though, upon the ſenſe of their diſobedience, the aſſembly was again diſſolved by the king's proclamation; yet they continued as before in contempt thereof. In which ſeſſion they condemned the calling of biſhops, the articles of *Perth*, the liturgy, and the book of canons, as inconſiſtent with the ſcripture, and the kirk of *Scotland*. They proceed next to the rejecting of the five controverted points, which they called *Arminianiſm*: and finally, decreed a general ſubſcription to be made to theſe conſtitutions. For not conforming

Henderſon the moderator or preſident of the convention of Glaſcow.

* Heylen's Aerius Redivivus, L. xiii. c. 437.

whereunto

whereunto the biſhops, and a great part of the regular clergy, are expelled the country, although they had been animated unto the refuſal, as well by the conſcience of their duty, as by his majeſty's proclamation, which required it of them.

They expel the biſhops, and regular clergy out of their country.

" They could not hope, that the king's lenity ſo abuſed might not turn to fury, and therefore thought it was high time to put themſelves into arms, to call back moſt of their old ſoldiers from the warres in *Germany*, and almoſt all their officers from ſuch commands in the *Netherlands*; whom to maintain, they intercept the king's *revenue*, and the rents of the biſhops, and lay great taxes on the people, taking up arms and ammunition from the *States United*, with whom they went on ticket, and long days of payment, for want of ready money for their ſatisfaction. But all this had not ſerved their turn, if the king could have been perſwaded to have given them battel, or ſuffered any part of that great army, which he brought againſt them to lay waſte their country: whoſe tenderneſs, when they once perceived, and knew withall how many friends they had about him, they thought it would be no hard matter to obtain ſuch a pacification, as might ſecure them for the preſent from an abſolute

They take open ſteps towards rebellion.

The king withdraws his army, and diſbands them.

absolute conquest, and give them an opportunity to provide better for themselves in the time to come, upon the reputation of being able to divert or break such a puissant army. And so it proved in the event: for the king had no sooner retired his forces both by sea and land, and given his soldiers a licence to return to their several houses, but the *Scots* presently protest against all the articles of the pacification, put harder pressures on the king's party, than before they suffered, keep all their officers in pay; by their messengers and letters apply themselves to the *French* king for support and succours. By whom encouraged under hand, and openly countenanced by some agents of the Cardinal *Richelieu*, who then governed all affairs in *France*, they enter into *England* with a puissant army, making their way to that invasion by some printed pamphlets, which they dispersed into all parts, thereby to colour their rebellions, and bewitch the people.

The Scots take advantage of the king's lenity, and march an army into England.

" And now the *English presbyterians* take the courage to appear more publickly in the defence of the *Scots* and their proceedings, than they had done hitherto. A parliament had been called on the 13th of *April*, for granting moneys to maintain the war against

the *Scots*. But the commons were ſo backward in complying with the king's deſires, that he found himſelf under the neceſſity of diſſolving the parliament, which elſe had blaſted his deſign, and openly declared in favour of the publick enemies. This puts the diſcontented rabble into ſuch a fury, that they violently aſſaulted *Lambeth Houſe*, but were as valiantly repulſed; and the next day break open all the priſons in *Southwark*, and releaſe all the priſoners, whom they found committed for their inconformities.

The Scotch rebels countenanced by many in England.

* " Nor was it long before it openly appeared, what great power the preſbyterian party had in London, which animated *Pennington* attended with ſome hundreds of inferior note, to tender a petition to the houſe of commons, againſt the government of biſhops here by law eſtabliſhed. It was affirmed, that this petition was ſubſcribed by many thouſands; and it was probable enough to be ſo indeed. But whether it was ſo or not, he gave thereby ſuch an occaſion to the houſe of commons, that they voted down the canons, which had paſſed in the late convocation, condemned the biſhops and clergy in great ſums of money, which had ſubſcribed

Pennington's petition to parliament againſt the biſhops.

* Heylin Aerius Redivivus, c. xiii. p. 438, 439.

to

to the ſame, decry the power of all provincial or national ſynods, for making any canons or conſtitutions, which could bind the ſubject, until they were confirmed by an act of parliament. And having brought this general terror on the biſhops and clergy, they impeach the archbiſhop of high treaſon, cauſe him to be committed to the Black Rod, and from thence to the Tower. Which being done, ſome other of the biſhops and clergy muſt be ſingled out, informed againſt by ſcandalous articles, and thoſe articles printed, without any conſideration either true or falſe.

Impeachment of the archbiſhop of Canterbury, and other biſhops and clergy.

" And though a convocation were at that time ſitting, yet to increaſe the miſeries of a falling-church, it is permitted, that a private meeting ſhould be held in the deanry of *Weſtminſter*, to which ſome orthodox and conformable divines were called, as a foil to the reſt, which generally were of *preſbyterian* or *puritan* principles. By them it was propoſed, that many paſſages in the liturgy ſhould be expunged, and others altered to the worſe. That decency and reverence in officiating God's public ſervice ſhould be brought within the compaſs of innovations. That doctrinal *Calviniſm* ſhould be entertained in all parts of the church; and all their

Doctrinal Calviniſm eſtabliſhed by the meeting in Weſtminſter.

their Sabbath ſpeculations, tnough contrary to *Calvin*'s judgment, ſuperadded to it. But before any thing could be concluded in thoſe weighty matters, the commons ſet their bill on foot againſt *root* and *branch*, for putting down all biſhops and cathedral churches, which put a period to that meeting without doing any thing. And though the bill, upon a full debate thereon amongſt the peers, was caſt out of that houſe, and was not, by the courſe of parliaments, to be offered again; yet contrary to all former cuſtom, it was preſt from one time to another, till in the end they gained the point, which they ſo much aimed at."

The rebellion formally commenced at Hull.

By the perſonal inſults offered to the king, and the open uſurpation of the executive part of the government by the houſe of commons, his majeſty was neceſſitated to fly into Yorkſhire, where the party at Hull and elſewhere unmaſked their deſigns by open armed rebellious reſiſtance. And now, as Heylin obſerves, * "comes Calvin's doctrine for reſtraining the power of kings to be put in practice." From henceforth the very relation of ſovereign and ſubject ſeems to have ceaſed between that party and the king, as

* Heylin's Aerius Redivivus, p. 144.

appears

appears upon the face of all their future acts. They inſiſted, by their nineteen propoſitions to the king, amongſt many other inſolent demands, * "*That all the lords of his majeſty's council, all the great officers both of court and ſtate, the two chief juſtices, and the chief barons of the exchequer, ſhould be from henceforth nominated and approved by both houſes of parliament. That all the great affairs of the kingdom ſhould be managed by them, even unto the naming of a governor for his majeſty's children, and for diſpoſing them in marriage at the will of the houſes. That no popiſh lord (as long as he continued ſuch) ſhould vote in parliament.* And amongſt many other things of like importance, *That he would give conſent to ſuch a reformation of church-government and liturgy, as both the houſes ſhould adviſe.* But he knew well enough that to grant all this was plainly to diveſt himſelf of all regal power, which God had put into his hands; and therefore he returned ſuch an anſwer to them, as the neceſſity of his affairs compared with thoſe impudent demands, did ſuggeſt unto him. But as for their demand about reformation, he had anſwered it in part before they made it, by ordering a col-

The demands of the rebels.

* Heylin, p. 145. & ſeq.

lection

lection of ſundry petitions preſented to himſelf, and both houſes of parliament in behalf of *epiſcopacy*, and for the preſervation of the liturgy to be printed and publiſhed. By which petitions it appeared, that there was no ſuch general diſaffection in the ſubjects unto either of them (whether they were within the power of the houſes, or beyond their reach) as by the faction was pretended; the total number of ſubſcribers unto ſeven of them only (the reſt not being calculated in the ſaid collection) amounting to four hundred eighty-two lords and knights, one thouſand ſeven hundred and forty eſquires and gentlemen of note, ſix hundred thirty-one doctors and divines, and no fewer than forty-four thouſand five hundred fifty-nine freeholders of good name and note.

The majority of the nation wiſhed to preſerve epiſcopacy and the liturgy.

" And now the war begins to open. The gentlemen of *Yorkſhire* being ſenſible of that great affront, which had been offered to his majeſty at the gates of *Hull*, and no leſs ſenſible of thoſe dangers, which were threatened to him by ſo ill a neighbourhood, offered themſelves to be a guard unto his perſon. The houſes of parliament upon the apprehenſion of ſome fears and jealouſies, had ook a guard unto themſelves in *December* laſt; but they conceived the king had ſo much innocence, that he needed none; and

The gentlemen of Yorkſhire openly declare for the king.

therefore his accepting of this guard of gentlemen is voted for a levying of war againſt the parliament, and forces muſt be raiſed in defence thereof. It happened alſo, that ſome members of the houſe of commons, many of his domeſtick ſervants, and not a few of the nobility and great men of the realm, repaired from ſeveral places to the king at *York*; ſo far from being willing to involve themſelves in other men's ſins, that they declared the conſtancy of their adhæſion to his majeſty's ſervice. Theſe men they branded firſt by the name of *malignants*, and after looked upon them in the notion of evil counſellors; for whoſe removing from the king they pretend to arm, (but now the ſtale device muſt be taken up) as well as in their own defence; towards the raiſing of which army, the *preſbyterian* preachers ſo beſtir themſelves, that the wealthy citizens ſend in their plate, the zealous ſiſters robbed themſelves of their bodkins and thimbles, and ſome poor wives caſt in their wedding-rings, like the widow's mite, to advance the ſervice. Beſides which, they ſet forth inſtructions, diſperſed into all parts of the realm, for bringing in of horſes, arms, plate, money, jewels, to be repaid again on the *publick faith*; appoint their treaſurers for the warr; and nominate the earl of

The zeal of the puritanical party in forwarding the rebellion.

of *Eſſex* for their chief commander, whom ſome diſgraces from the court had made wholly theirs. Him they commiſſionate to bring the king from his *evil counſellors*, with power to kill and ſlay all ſuch, as oppoſed them in it. That which ſerved their turns beſt was a new diſtinction, which they had coined between the *perſonal* and *political* capacity of the ſupreme magiſtrate; alledging, that the king was preſent with the houſes of parliament in his *political* capacity, though in his *perſonal* at *York*; that they might fight againſt the king in his *perſonal* capacity, though not in his *politick*, and conſequently, might deſtroy *Charles Stuart* without hurting the king. This was good *preſbyterian* doctrine; but not ſo edifying at *York*, as it was at *Weſtminſter*. For his majeſty finding a neceſſity to defend *Charles Stuart*, if he deſired to ſave the king, began to entertain ſuch forces, as repaired unto him, and put himſelf into a poſture of defence againſt all his adverſaries."

The rebel party juſtify themſelves under the diſtinction of acting againſt the perſonal but not the political capacity of the king.

The war was openly carried on with various ſucceſs; the rebel party pillaged the towns and laid waſte the country with unparalleled ferocity, and demoliſhed the churches with more than pagan fury and hatred to religion; but after their ſucceſs

ſeemed to fail them, both in the north and weſt, * "no courſe was found fitter for them, than to invite the *Scots* to their aid and ſuccour, whoſe amity they had lately purchaſed at ſo dear a rate. Hereupon *Armin* and ſome others are diſpatched for *Scotland*; where they applied themſelves ſo dextrouſly to that proud and rebellious people, that they conſented at the laſt to all things, which had been deſired. But they conſented on ſuch terms, as gave them an aſſurance of one hundred thouſand pound in ready money; the army to be kept both with pay and plunder; the chief promoters of the ſervice to be rewarded with the lands and houſes of the *Engliſh biſhops*, and their commiſſioners to have as great an influence in all counſels both of peace and war, as the lords and commons.

Stipulation with the Scots to join in the rebellion.

"But that, which proved the ſtrongeſt temptation to engage them in it, was an aſſurance of reducing the church of *England* to an exact conformity in government and forms of worſhip to the kirk of *Scotland*; and gratifying their revenge and malice, by proſecuting the arch-biſhop of *Canterbury* to the end of his tragedy. For compaſſing which ends, a

* Heylin, ubi ſupra, l. xiii. p. 453.

ſolemn

solemn league and covenant is agreed between them, first taken and subscribed to by the *Scots* themselves, and afterwards by all the members in both houses of parliament, as also by the principal officers of the army, all the divines of the assembly, almost all those, which lived within the lines of communication, and in the end by all the subjects, which either were within their power, or made subject to it. Now by this covenant the party was to bind himself, amongst other things, first, *That he would endeavour in his place and calling to preserve the reformed religion in Scotland, in doctrine, discipline, and government; that he would endeavour, in like manner, the reformation of religion in the kingdoms of* England *and* Ireland, *according to the word of God, and the example of the best reformed churches; but more particularly to bring the churches of God in all the three kingdoms to the nearest conjunction and uniformity in religion, confession of faith, form of church government, and* directory *for worship, and catechising.* Secondly, *That without respect of persons, they would endeavour to extirpate popery and prelacy; that is to say, church government by arch-bishops, bishops, their chancellors and commissairs, deans, deans and chapters, arch-deacons, and all other ecclesiastical*

The league and covenant.

officers depending on it. And thirdly, *That he would endeavour the diſcovery of ſuch as have been, or ſhall be incendiaries, malignants, and evil inſtruments, either in hindering the reformation of religion, or in dividing between the king and his people, &c. whom they ſhould bring to condign puniſhment before the ſupream judicatories of either kingdom, as their offences ſhould deſerve.*"

It would be impoſſible to make a juſt repreſentation of the rebellious tyranny practiſed by this reforming herd of zealots over the king, clergy, and people, without entering more largely into the hiſtory of that diſgraceful uſurpation, than the intent and bounds of this publication will admit of. By whatever nominal *religious* diſtinction or appellation the rebels were then known, whether as preſbyterians, puritans, or independents, their actions repreſent them as raging with that ſavage luſt for levelling, that knew no political medium between the fierceſt tyranny, and the moſt unbridled anarchy. A leveller of the laſt century was well deſcribed by one, who probably was perſonally acquainted with many of the actors in that bloody ſcene of our national diſgrace. *"He has more ambition in his

Deſcription of a leveller of the laſt century.

* Secret Hiſt. of the Calves Head Club, p. 24.

breaſt,

breaſt, than the moſt extravagant tyrant in the univerſe. He is very fearful of being made a ſlave, but is very deſirous of being a ſlave-maker; for whenever he crys out for liberty, he is endeavouring to deſtroy it; and never thinks himſelf a compleat free-man, till the nation he lives in, has no religion to guide him, no law to puniſh him; for his chief aim is to pull down all, when the madneſs of the common people gives him a fair opportunity. In all conditions, he is as reſtleſs as a froward infant, whilſt breeding of his teeth; will pleaſe no government, and with no government be pleaſed. He is as tempeſtuous as the ocean, that ſwells into rage with every gale, that happens, and ſeldom reconciles himſelf to a calm, till like that he has been the occaſion of ſome remarkable miſchief."

I ſhall not attempt to wound the feelings of thoſe of my countrymen, whoſe minds want no conviction, by a painful rehearſal of the tragical cataſtrophe of our late ſovereign king Charles the Firſt: * "*who was given up to the violent outrages of wicked men, to be deſpitefully uſed, and at laſt murdered by*

* Vid. Book of Common Prayer: Form of Prayer for the 30th of January.

them. And, *though we cannot reflect upon ſo foul an act but with horror and aſtoniſhment,*" yet too true is it, that even in this enlightened age is the commemoration of this day kept up by many in a ſpirit widely different from that, which the church and * parliament of England countenance and recommend. † " On the bringing of king Charles a priſoner to London, in my opinion, there was ſufficient cauſe for triumph. The 30th of January was (to uſe a phraſe of admiral Keppel's) a proud day for England, as well as the 14th of July for France; and it will be remembered as ſuch by the lateſt poſ-

Dr. Prieſtley's exultation in the murder of king Charles.

* The act of parliament, which, as already obſerved, binds every individual unexceptionably in this community, is of the ſame tenure and ſpirit as the ſervice of the church. I mention this to prove how little any ſet of individuals are authorized, upon the univerſal principles of all governments, to vilify, reſiſt, and counteract the moſt ſolemn religious and legiſlative acts of the majority. " The horrid and execrable murder of your majeſty's royal father, our late moſt gracious ſovereign Charles the Firſt, of ever bleſſed and glorious memory, hath been committed by a party of wretched men, deſperately wicked, and hardened in their impiety, who having firſt plotted and contrived the ruin and deſtruction of this excellent monarchy, and with it of the true reformed proteſtant religion, which had been ſo long protected by it and flouriſhed under it." 12 Car. II. c. xxx.

† Dr. Prieſtley's Fifth Letter to Mr. Burke, publiſhed laſt year.

terity

terity of *freemen.*" Little ſurely does it become a loyal ſubject of Great Britain triumphantly to revel in the remembrance of ſuch ſcenes; let him rather put on the awful feelings of the noble hiſtorian of this rebellious and bloody tragedy.

The true and proper ſentiments upon the death of king Charles.

* " The ſeveral unheard of inſolencies, which this excellent prince was forced to ſubmit to, at the other times he was brought before that odious judicatory; his majeſtic behaviour, and reſolute inſiſting upon his own dignity, and defending it by manifeſt authorities in the law, as well as by the cleareſt deductions from reaſon; the pronouncing that horrible ſentence upon the moſt innocent perſon in the world; the execution of that ſentence by the moſt execrable murther, that was ever committed ſince that of our bleſſed Saviour, and the circumſtances thereof; the application and interpoſition, that was uſed by ſome noble perſons to prevent that woful murther, and the hypocricy, with which that interpoſition was eluded; the ſaint-like behaviour of that bleſſed martyr, and his chriſtian courage and patience at his death, are all particulars ſo well known, and have been

† Clarendon's Hiſt. of the Civil War, vol. iii. lib. xi. p. 197.

ſo

ſo much enlarged upon in a treatiſe peculiarly writ to that purpoſe, that the farther mentioning it in this place would but afflict and grieve the reader, and make the relation itſelf odious, as well as needleſs, and therefore no more ſhall be ſaid here of that deplorable tragedy, ſo much to the diſhonour of the nation, and the religion profeſſed by it, though undeſervedly."

Reaſons for not entering into the particulars of the rebellion.

The publiſher of Lord Clarendon's hiſtory has furniſhed me with a reaſon, which fully warrants me in paſſing over the particular ſcenes, which were effected by the levelling party of the laſt century. * "It is a difficult province to write the hiſtory of the civil wars of a great and powerful nation, where the king was engaged with one part of his ſubjects againſt the other, and both ſides were ſufficiently inflamed, and the neceſſity of ſpeaking the truth of ſeveral great men, that were engaged in the quarrel on either ſide, who may ſtill have conſiderable relations deſcended from them now alive, makes the taſk invidious as well as difficult."

The avowed purport of this publication is to prove, that the preſent eſtabliſhment of our

* Preface to the Hiſtory of the Civil War, p. 11. fol. Edition of Oxford.

conſtitution and government is admirably calculated to enſure the ſubordination, and preſerve the welfare and happineſs of all Britiſh ſubjects. I hope the philoſophers and politicians of the preſent illuminated day will again forgive me for recurring (after the example of Mr. Burke*) to the ſentiments of the laſt century.

* *Appeal from the New to the Old Whigs*, p. 84. "It is current, that theſe old politicians knew little of the rights of men; that they loſt their way by groping about in the dark, and fumbling among rotten parchments and muſty records. Great lights, they ſay, are lately obtained in the world; and Mr. Burke, inſtead of ſhrowding himſelf in exploded ignorance, ought to have taken advantage of the blaze of illumination, which has been ſpread about him. It may be ſo. The enthuſiaſts of this time, it ſeems, like their predeceſſors in another faction of fanaticiſm, deal in lights. Hudibras pleaſantly ſays of them, they

Have lights, where better eyes are blind,
As pigs are ſaid to ſee the wind.

"The author of the Reflections has *heard* a great deal concerning the modern lights; but he has not yet had the good fortune to *ſee* much of them. He has read more than he can juſtify to any thing but the ſpirit of curioſity, of the works of theſe illuminators of the world. He has learned nothing from the far greater number of them, than a full certainty of their ſhallowneſs, levity, pride, petulance, preſumption, and ignorance. Where the old authors, whom he has read, and the old men, whom he has converſed with, have left him in the dark, he is in the dark ſtill. If others however have obtained any of this extraordinary light, they will uſe it to guide them in their reſearches and their conduct."

"There

How the old parties of this country have become extinct.

* "There hath been within the compaſs of few years much talk, and God knows, too many ill effects too of factions in this kingdom; and we have lived in our days to ſee the two great parties of late known by the names of *Whig* and *Tory* directly change their ground; and thoſe, who were formerly the anticourtiers become as pliant and obſequious, as ever they were, who had been the moſt found fault with on that ſcore. But we are humbly of opinion, that at this time of day neither of thoſe parties have the game in their hands, as they have formerly perhaps fancied to themſelves. But they, who ſhall be ſo honeſt and ſo wiſe conſtantly to prefer the true intereſt of England to that of any other country or people, preſerve the religion and the laws, protect and promote the trade of the nation, thriftily and providently adminiſter the publick treaſure, and ſtudy to maintain the ſovereignty of our ſeas, ſo naturally, ſo anciently, and ſo juſtly the true defence of this kingdom; that body, whomſoever it ſhall be compoſed of, ſhall have the weight of England on its ſide; and if there can be any of another frame, they muſt in the end prove ſo many miſerable rotten reeds."

* Preface to Clarendon's Hiſt. p. 8.

The

The general idea of theſe horrid ſcenes of blood and devaſtation, which for twenty years together overwhelmed this unfortunate land, is faithfully expreſſed by the noble hiſtorian, who reports them. * " Though the hand and judgment of God will be very viſible in infatuating a people (as ripe and prepared for deſtruction) into all the perverſe actions of folly and madneſs, making the weak to contribute to the deſigns of the wicked, and ſuffering even thoſe by degrees, out of conſcience of their guilt, to grow more wicked than they intended to be; letting the wiſe to be impoſed upon by men of ſmall underſtanding, and permitting the innocent to be poſſeſſed with lazineſs and ſleep in the moſt viſible article of danger; uniting the ill, though of the moſt different opinions, oppoſite intereſts, and diſtant affections, in a firm and conſtant league of miſchiefs; and dividing thoſe, whoſe opinions and intereſts are the ſame, into faction and emulation more pernicious to the publick, than the treaſon of the others; whilſt the poor people under pretence of zeal to religion, law, liberty, and parliaments (words of pretious eſteem in their juſt ſignification) are furiouſly hurried into

The ideas and judgments of our anceſtors of the rebellion.

† Clarendon's Hiſt. of the Civil Wars, vol. i. p. 3 & 4.

actions

actions introducing atheiſm, and diſſolving all the elements of chriſtian religion; cancelling all obligations, and deſtroying all foundations of law and liberty, and rendring not only the privileges, but the very being of parliaments deſperate and impracticable; I ſay, though the immediate finger and wrath of God muſt be acknowledged in theſe perplexities and diſtractions, yet he, who ſhall diligently obſerve the diſtempers and conjunctions of time, the ambition, pride, and folly of perſons, and the ſudden growth of wickedneſs, from want of care and circumſpection in the firſt impreſſions, will find all theſe miſeries to have proceeded, and to have been brought upon us from the ſame natural cauſes and means, which have uſually attended kingdoms ſwoln with long plenty, pride, and exceſs, towards ſome ſignal mortification and caſtigation of heaven. And it may be, upon the conſideration how impoſſible it was to foreſee many things, that have happened, and of the neceſſity of overlooking many other things, we may not yet find the cure ſo deſperate, but that by God's mercy the wounds may be again bound up; and then this proſpect may not make the future peace leſs pleaſant and durable."

The real effects of this convulſive ſtate of uſurpation

uſurpation and tyranny could not be ſo ſenſibly felt, nor probably ſo truly and pathetically expreſſed, as by thoſe reſolute patriots * in 1659, who had ſeen and ſuffered the

* Notwithſtanding I have endeavoured to ſhew the tendency and the effects of certain principles and doctrines imported from Geneva into this country, as contradictory to and ſubverſive of the fundamental principles of our government, yet I am far from concluding, that every perſon profeſſing the preſbyterian religion, though it be generally ſuppoſed to have originated alſo from Geneva, is infected with them. They are in fact principles of ſtate policy, not tenets of a revealed religion. Much leſs would I be ſuppoſed to intimate, that the profeſſion of the preſbyterian religion, as it is by law eſtabliſhed in Scotland, or as it is tolerated in England, is in any manner incompatible with the ſtricteſt duties of a loyal ſubject of this country. There cannot be a ſtronger inſtance of this, than the part which the more reſpectable members of the preſbyterians took in the reſtoration of king Charles the Second. So ſays Lord Clarendon (vol. iii. p. 601) "With theſe commiſſioners from the parliament and from the city, there came a company of their clergymen to the number of eight or ten, who would not be looked upon as chaplains to the reſt, but being the popular preachers of the city (*Reynolds*, *Calamy*, *Caſe*, *Manton*, and others, the moſt eminent of the preſbyterians) deſired to be thought to repreſent that party. They intreated to be admitted all together to have a formal audience of his majeſty; where they preſented their duties, and magnified the affections of themſelves and their friends, who, they ſaid, had always, according to the obligation of their covenant, wiſhed his majeſty very well; and had lately, upon the opportunity, that God had put into their hands, informed the people of their duty; which,

the whole ſeries and rigour of them; by their bold and ſpirited declaration, they opened the deluded eyes, and rouzed the depreſſed ſpirits of the nation to bear up manfully againſt the ſtorm, and ſo at length brought the ſhattered wreck of the ſtate veſſel ſafe into harbour.

The ſentiments of thoſe who brought about the reſtoration.

* "They ſaid, that ſince God had ſuffered the ſpirit of diviſion to continue in this nation, which was leſt without any ſettled foundation of religion, liberty, and property, the legiſlative power uſurped at pleaſure, the army raiſed for its defence miſled by their ſuperior officers, and no face of government remaining, that was lawfully conſtituted; therefore they being ſenſible of their duty and utter ruin, if theſe diſtractions ſhould continue, had taken arms in vindication of the freedom of parliaments, of the known laws, liberty, and property, and of the good people of this nation groaning under inſupportable taxes; that they cannot deſpair of the bleſſing of

which they preſumed, his majeſty had heard had proved effectual, and been of great uſe to him. They thanked God for his conſtancy to the proteſtant religion, and profeſſed, that they were no enemies to moderate epiſcopacy, only deſired, that ſuch things might not be preſſed upon them in God's worſhip, which in their judgment, who uſed them, were acknowledged to be matters indifferent, and by others were held unlawful."

* Clar. Hiſt. of the Civil Wars, b. xvi. vol. iii. p. 526.

God, nor of the chearful concurrence of all good people, and of the undeceived part of the army, whoſe arrears and future advancement they would procure, ſuffering no impoſition or force on any man's conſcience."

If I am charged with inconſiſtency in deprecating the acts of the effective government of the nation, during this tyrannical uſurpation of twenty years, after having eſtabliſhed the principle, that *the acts of the majority are concluſive upon the whole*, I firſt oppoſe to it that unexceptionable maxim, that there can be no real government, which is not admitted by the *free* conſent of the majority of the people. Now to prove, that the ſcenes of bloodſhed, cruelty, and tyranny from the year 1641 to the year 1660, were not by the free aſſent of the majority of the nation, I ſhall beg leave to adduce the following authorities in evidence. * "The number of the commons, that paſſed their act for the king's trial were but forty-ſix, not the tenth part of a houſe of commons duly conſtituted; and if the people had been aſked one by one, not one in a hundred would have conſented to the king's murder, or choſen ſuch repreſentatives (if they might have had a free choice),

The rebellion not the free act of the majority of the nation.

* D. Brady's Hiſt. of the Succeſſion, p. 357.

as would have conſented to it; and yet this charge is drawn up and urged againſt the king, as the act of the commons and all the people of England; or laſtly, who can deny, that they publiſhed for law and right whatſoever they did or ſaid, though it were never ſo treaſonable, vile, or wicked." In the anſwer of the houſe of commons to King Charles the Second's letter, or declaration from Breda, we ſhall hear ſome more authentic accounts of the fewneſs of the actors and abettors in theſe ſcenes of horror and tyranny. * "And we beſeech your majeſty, we may add this farther for the vindication of parliaments, and even of the laſt parliament convened under your royal father of happy memory, when as your majeſty well obſerves, through miſtakes and miſunderſtandings, many inconveniences were produced, which were not intended; that thoſe very inconveniences could not have been brought upon us by thoſe perſons, who had deſigned them, without violating the parliament itſelf; for they well knew it was not poſſible to do a violence to that ſacred perſon, whilſt the parliament, which had vowed and covenanted for the defence and ſafety of that perſon remained entire. Surely Sir, as the

* Vid. Clar. Hiſt. of the Civil Wars, b. xvi. Vol. iii. p. 592.

perſons

perſons of our kings have ever been dear unto parliaments, ſo we cannot think of that horrid act committed againſt the precious life of our late ſovereign, but with ſuch a deteſtation and abhorrency, as we want words to expreſs it; and next to wiſhing it had never been, we wiſh it may never be remembered by your majeſty, to be unto you an occaſion of ſorrow, as it will never be remembered by us, but with that grief and trouble of mind, which it deſerves; being the greateſt reproach, that ever was incurred by any of the *Engliſh* nation, an offence to all the proteſtant churches abroad, and a ſcandal to the profeſſion of the truth of religion here at home; though both profeſſion and true profeſſors, and the nation itſelf, as well as the parliament, were moſt innocent of it, it having been only the contrivance and act of ſome few ambitious and bloody perſons, and ſuch others, as by their influence were miſled. And as we hope and pray, that God will not impute the guilt of it, nor of all the evil conſequences thereof, unto the land, whoſe divine juſtice never involves the guiltleſs with the guilty."

The whole nation not guilty.

Though Dr. Prieſtley finds occaſion of exultation and triumph in the annual commemoration of the 30th of January, yet in ano-

The murderers of King Charles a faction, and not repreſentatives of the nation.

ther part of his works he owns, that from the nature of things it was neceſſary, that the oppoſition to King Charles's government ſhould begin from a few, who might therefore be called a *faction*, for whom there was no ſafety ſhort of his death. * "For," ſays he, "it is to be *regretted, that the ſituation of things was ſuch, that the ſentence could not be paſſed by the whole nation*, † *or their repreſentatives ſolemnly aſſembled*

* Prieſtley upon Government, p. 39.

† Lord Clarendon relates the following anecdote, not irrelevant to the preſent ſubject, which happened on the firſt day of King Charles's trial. *Hiſt. of the Civil Wars*, vol. iii.. b. xi. p. 196. "When all thoſe, who were commiſſioners had taken their places, and the king was brought in, the firſt ceremony was, to read their commiſſion, which was the ordinance of parliament for the trial; and when the judges were all called, every man anſwering to his name, as he was called, and the preſident being firſt called and making anſwer, the next who was called being the general, Lord *Fairfax*, and no anſwer being made, the officer called him the ſecond time, when there was a voice heard that ſaid, '*he had more wit than to be there*;' which put the court into ſome diſorder; and ſomebody aſking who it was, there was no anſwer, but a little murmuring; but preſently, when the impeachment was read, and that expreſſion uſed, of '*all the good people of England*,' the ſame voice in a louder tone anſwered, '*No, nor the hundredth part of them*;' upon which one of the officers bid the ſoldiers give fire into that box, whence thoſe preſumptuous words were uttered; but it was quickly diſcerned, that it was the general's wife the lady *Fairfax*, who had uttered both thoſe ſharpe ſayings, who was preſently perſuaded or forced to leave the place, to prevent any new diſorder. She

aſſembled for that purpoſe. I am ſenſible indeed that the generality of the nation at that time would not have voted for the death of their ſovereign."

From what I have already ſaid, may we collect a ſpecimen of the deadly fruit, which this faction would produce, if the growth of the plant were in any manner encouraged in this country. Some of the moſt noxious herbs, under the diſguiſe of improper names, find their way into the faireſt gardens; but one fatal inſtance of their deadly poiſon, induces the melancholy but requiſite caution to prevent their future progreſs to maturity. Thus confident am I, that the abuſive application of the term *religious* to theſe ſeditious and rebellious political ſectaries, has alone procured the admiſſion, adoption, or toleration of them in our conſtitution. We have

Seditious political ſectaries maſked under a *religious* appellation.

She was of a very noble extraction, one of the daughters and heirs of *Horace* Lord *Vere* of *Tilbury*, who having been bred in *Holland*, had not that reverence for the church of *England*, as ſhe ought to have had, and ſo had unhappily concurred in her huſband's entering into rebellion, never imagining what miſery it would bring upon the kingdom, and now abhorred the work in hand as much, as any body could do, and did all ſhe could to hinder her huſband from acting any part in it. Nor did he ever ſit in that bloody court, though he was throughout overwitted by *Cromwell*, and made a property to bring that to paſs, which could very hardly have been otherwiſe effected."

been long ago told by good authority, that *from their fruits ye ſhall know them*; and I confidently affirm what nobody will deny, that the mild ſpirit of the Britiſh conſtitution never will be diſgraced by the intolerance and perſecution of thoſe, who know the uſe of no other, than the ſpiritual weapons of St. Paul to propagate their doctrine, who recommend the truth of it by their meekneſs, humility, and peaceable ſubmiſſion to the powers of the ſtate, and command reſpect by the charity they practiſe towards their neighbour, and the edifying example of their own innocency.

As God has left the choice and form of government to each community, ſo has he given to each community, the neceſſary powers and means for its own preſervation, which in their nature muſt be variable, that they may fit and be ſuitable, to that indefinite variety of circumſtances and occaſions, which in the occurrences and fates of empires are poſſible to ariſe. Dr. Kippis in his ſermon upon the centenary commemoration of the revolution has expreſſed an idea highly liberal in its tendency, and which if carried into execution would perhaps add the moſt laſting ſecurity to the peace, welfare, and proſperity of our excellent conſtitution. * "Perhaps it

* Dr. Kippis's Sermon, p. 29.

may

may be reſerved for the farther glory of this reign to aboliſh all penal laws in matters of religion, and to put every man on the fair footing of being anſwerable to God only for his conſcience, while he gives ſecurity for his civil allegiance and peaceable behaviour, as a member of the community."

CONCLUSION.

IN the variety of matter, which the nature of my undertaking has obliged me to touch upon, I have unintentionally exceeded the limits, to which I originally meant to confine myſelf. The importance however of the queſtions themſelves will, I hope, ſcreen me from the imputation of prolixity. I have throughout the work endeavoured to make a faithful and candid repreſentation of every fact, that I had occaſion to ſpeak of; if any however ſhall be found to have been miſconceived or miſrepreſented, I ſolemnly diſavow the intention of miſleading others, though I may have erred myſelf.

Attempts have been lately made with much rancour and much inſolence to miſrepreſent and vilify our conſtitution. I have exerted my humble efforts to counteract them; and I ſhall ever boaſt of my wiſhes to repreſent to my countrymen the conſtitution of this kingdom as the moſt perfect work of human polity. If in the gradual formation of it, we have been more fortunate or more wiſe, than our neighbours, we may alſo ſtill boaſt of being the foremoſt towards attaining the higheſt poſſible

perfection of civil government. We have a baſis ſtill to work and improve upon, formed of the venerable materials of millennial experience, which time and circumſtances have cemented, ſettled, and incorporated into a body of the moſt durable ſolidity. A baſis widely different from thoſe compoſed of the crumbling plaiſter of Paris, upon which the modern ſtate architects have been unable to erect with ſtability the ſlighteſt temporary ſuperſtructure.

The alliance which our conſtitution has inſtituted between church and ſtate has obliged me to enter further into the topic of religion, than a mere diſſertation upon the civil conſtitution of a country might ſeem to require. I am aware of the extreme difficulty of treating religious ſubjects in a manner ſatisfactory to all perſons. It has neither been my province nor my intention to diſcuſs the merits of any religious perſuaſion whatever; and if any reflection or obſervation have eſcaped me, that can diſpleaſe or offend the theologians * of any religious

* I am ſenſible, that in quoting the authorities of ſome of our conſtitutional and legal writers, I have ſometimes adopted phraſes, which may not ſtand the ſevere ordeal of theological preciſion: for inſtance, it is uſually ſaid, that the king of England *appoints* biſhops, &c.: now neither in *legal, conſtitutional,* nor *theological* accuracy, is this word *appoint* proper; becauſe it is not conſonant with the fact. For if by the word *appoint* we are to underſtand the gift or collation of *real ſpiritual power or juriſdiction*, which the act of conſecration gives not, and which conſiſts in the power of commanding in *ſpiritual* matters under pain of ſin, ſpiritually cenſuring

religious ſociety, I truſt in the ſpirit of that chriſtian meekneſs, to which they all lay claim, that the unintended offence will be forgiven. But if in tracing and diſcuſſing the principles of civil government, I have endeavoured to caution my countrymen againſt the effects of certain political doctrines, which have already proved fundamentally injurious to our conſtitution, I have done it from the conviction, that as the Engliſh conſtitution is not repugnant to the faith of a true chriſtian, ſo principles ſubverſive of this conſtitution cannot have been revealed by the divine author of that faith. I no more attribute theſe turbulent and anarchical principles to the doctrines and faith of any ſociety of

cenſuring and excommunicating, &c. it is evident, that the law veſts no ſuch prerogative, right, or power in the crown. For upon the avoidance of a biſhoprick, by ſtatute 25 H. VIII. c. 20. the king (Bl. vol. i. p. 379) ſends to the dean and chapter his uſual licence to proceed to election, called the *congè d'elire*, which was the conſtant uſage for many centuries before the reformation; and this *congè d'elire* is accompanied with a letter miſſive from the king, containing the name of the perſon, whom he would have them elect; and if the dean and chapter delay their election above twelve days, the nomination ſhall devolve to the king, who may by letters patent appoint ſuch perſon, as he pleaſes. This election or nomination, if it be of a biſhop, muſt be ſignified by the king's letters patent to the archbiſhop of the province; if it be of an archbiſhop to the other archbiſhop and two biſhops, or to four biſhops, requiring them to *confirm*, *inveſt*, *and conſecrate* the perſon ſo elected." This *confirmation*, *inveſtiture*, and *conſecration* are the acts, by which the conſtitution ſuppoſes the real *ſpiritual* juriſdiction to be conferred upon the biſhop. Before the reformation this *confirmation* and *inveſtiture* were made by the biſhop of Rome, as the Roman catholics held him to be the ſpiritual ſupreme head of their church, and from him deduced the gradations and regularity of their hierarchy. But though the nation have renounced that religion, and have transferred to their king whatever part of the headſhip of the civil eſtabliſhment

of chriſtians, than I lay to their charge the maxims and practices of robbers and pirates.

To prove, that any human inſtitution has attained its *ne plus ultra* of perfection is to produce internal evidence of a radical deficiency or vice in the ſyſtem; and to prove a continued progreſs in the melioration or improvement of a ſyſtem is concluſive evidence, that the ground-work of the ſuperſtructure is in its nature firm and permanent. I have endeavoured to trace and mark the advances, which our conſtitution has been gradually making ſince its firſt inſtitution towards the perfection of civil

eſtabliſhment of religion they formerly allowed to the pope, yet it is evident beyond cavil or doubt, that they neither attempted nor intended to inveſt, nor did they by law inveſt the king with a power of collating *ſpiritual* juriſdiction; for they expreſsly direct the biſhop to apply to the archbiſhop or other biſhops for that, which was not in its nature conferable by the laity; for though the law ſubjects the archbiſhop and biſhops to the ſevereſt penalties and forfeitures, if after ſuch election or nomination they refuſe to *confirm* and *inveſt* the perſon elected or nominated, yet it authorizes not the king or any other perſons to *confirm* and *inveſt*, or to grant or collate the real ſpiritual juriſdiction, nor does it ſay or ſuppoſe, that the perſon elected or nominated becomes a real ſpiritual paſtor of Chriſt's church without ſuch confirmation or inveſtiture. When the biſhop has been elected or nominated, and confirmed and inveſted, he then is to ſue to the king for his temporalities, which as appendages of the civil eſtabliſhment of religion were holden by our Roman catholic anceſtors, as well as by the nation at this day, to be at the diſpoſal and under the controul of the ſtate, and not of the ſupreme or other ſpiritual miniſters of the church of Chriſt; for in the year 1350 (25 Ed. III.) though they then did and for many centuries afterwards, continued to acknowledge the *ſpiritual* ſupremacy of the pope, they complained, that he aſſumed a right to give and grant church benefices to aliens and denizens, *as if he had been patron and advowee of the ſaid dignities and benefices, as he was not of right by the law of England.*

liberty; and in this progreſs do we find the ſureſt earneſt of future improvements, as the exigencies of times and circumſtances ſhall require them.

To the bleſſings of our happy conſtitution do we at this moment owe the exalted ſituation we hold amidſt ſurrounding nations envying, diſtracted, and diſtreſt. Who then but an avowed enemy will attempt to force or ſeduce us from the ſure hold of ſuch an unparalleled tranſcendency? The continuance alone of the means, by which we have attained the glory can enſure it to our poſterity. Let every true Engliſhman therefore join in the patriotic wiſh for the conſtitution,

ESTO PERPETUA.

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